

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

Crl.Rev.Pet.No. 1282 of 2015 ()

JUDGMENT IN CRA 404/2013 OF THE SESSIONS COURT, ALAPPUZHA DATED
14.07.2015

JUDGMENT IN CC 1346/2010 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT-I, CHERTHALA DATED 29.08.2013

REVISION PETITIONER/APPELLANT/ACCUSED:

K.S.VISWANATHAN, S/O. SANKARAN NARAYANA CHETTIAR,
AGED 30 YEARS, KRISHNA NIVAS, MAYITHARA P.O., CHERTHALA.

BY ADVS.SRI.T.JAYAKRISHNAN
SRI.R.KRISHNAKUMAR (CHERTHALA)

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

1. THE CHERTHALA TALUK VYAPARI VYAVASAI CO-OPERATIVE SOCIETY LTD, A.1057, CHERTHALA, REPRESENTED BY SECRETARY MR. AJAYA GHOSH, AGED 38 YEARS, S/O. SUGUNAN CHENGOTHU NIKARTHU, VARANADU P.O, KOKKOTHAMANGALAM - 688524.
2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM- 682 031.

R BY PUBLIC PROSECUTOR SRI. G. JITHESH.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 13-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No. 1282 of 2015

Dated this the 13th day of October, 2015.

ORDER

The revision petitioner is the accused in C.C.1346 of 2010 on the files of the Court of the Judicial Magistrate of First Class-I, Cherthala.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced him thereunder to imprisonment till the rising of the court and to pay a compensation of ₹75,000/- to the complainant under Section 357 (3) Cr.P.C. The appeal filed against the said conviction and sentence was dismissed by the appellate court. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard both sides.

4. The prosecution allegation is that towards the discharge of the liability to the complainant, the revision petitioner issued Ext.P2 cheque in favour of the complainant.

The complainant presented the said cheque for encashment. However, the same was dishonoured due to the insufficiency of funds in the account of the revision petitioner. Statutory notice was issued on behalf of the complainant, which was received by the revision petitioner. However, the revision petitioner did not make payment of the cheque amount within the statutory period or thereafter.

5. Before the court below, PW1 was examined and Exts.P1 to P14 were marked for the complainant. No evidence was adduced on the side of the revision petitioner.

6. The courts below, after correctly evaluating the oral and the documentary evidence adduced by the complainant, came to the conclusion that the revision petitioner executed Ext.P2 cheque as contemplated under Section 138 of the N.I. Act. The defence set up by the revision petitioner was also repelled by the courts below. Since there is concurrent finding on facts, this Court will not be justified in interfering with the same, unless the finding is perverse or incorrect. No

circumstance has been brought to my notice to indicate that the concurrent finding by the courts below is perverse or incorrect. In the said circumstances, the concurrent finding of the courts below that the revision petitioner committed the offence under Section 138 of N.I Act does not warrant any interference by this court.

7. The trial court had taken a very lenient view in the matter of sentence. In the said circumstances, the sentence awarded by the trial court also does not warrant any interference by this Court.

In the result, this revision petition stands dismissed. However, the revision petitioner is granted six months to suffer the sentence.

Sd/-

B. SUDHEENDRA KUMAR
JUDGE

Scl.

True Copy

PA to Judge