

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. 1298 of 2015 ()

AGAINST THE JUDGMENT IN CRA 167/2010 of ADDL.SESIONS JUDGE,
FAST TRACK COURT – I, ALAPPUZHA DATED 04-04-2012

AGAINST THE JUDGMENT IN CC 285/2009 of J.M.F.C.-II,ALAPPUZHA
DATED 08-02-2010

REVISION PETITIONER(S):

SMITHY AGED 37 YEARS,
W/O. JOHNSON, T.J.,
THEKKEMURIYIL HOUSE, PERUMBAYIKADU P.O.
KOTTAYAM – 686 016

BY ADVS.SRI.C.ANILKUMAR (KALEESSERIL)
SRI.C.Y.VINOD KUMAR
SRI.P.M.MANASH

RESPONDENT(S):

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1. RAJEEV, R., AGED 40 YEARS, RAJALEKSHMI,
PUZHAVEEDU P.O., ALAPPUZHA, 688 009
 2. STATE OF KERALA, REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM

R2 BY PUBLIC PROSECUTOR SRI. R. GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 13-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Crl.R.P. No. 1298 of 2015
.....

Dated this the 13th day of October, 2015

ORDER

The revision petitioner is the accused in C.C. No. 285 of 2009 on the files of the court of the Judicial Magistrate of First Class-II, Alappuzha. The trial Court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to simple imprisonment for three months and to pay a compensation of Rs. 1,50,000/- to the complainant under Section 357 (3) Cr.P.C. In the appeal filed against the said conviction and sentence, the conviction was confirmed and the sentence was modified to imprisonment till the rising of the Court and to pay a compensation of Rs.1,50,000/- under Section 357 (3) Cr.P.C. Aggrieved by the said conviction and sentence, this revision petition has been filed.

2. Heard both sides.

3. The prosecution allegation is that in order to discharge

the liability of the revision petitioner to the complainant, the revision petitioner executed Ext. P1 cheque in favour of the complainant. The complainant presented the said cheque for encashment. However, the same was dishonoured as the account was closed by the revision petitioner. Statutory notice was issued on behalf of the complainant. The revision petitioner received the notice. However, the revision petitioner did not pay the cheque amount within the statutory period or thereafter.

4. Before the court below, PW1 was examined and Exts. P1 to P7 were marked for the complainant. No evidence was adduced on the side of the defence.

5. After evaluating the oral and documentary evidence adduced by the parties, the courts below concurrently found that the revision petitioner executed Ext. P1 cheque as contemplated under Section 138 of the N.I. Act. The defence set up by the revision petitioner was 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. There is no material before the court to indicate that the concurrent finding of 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 Sec. 138 of the N.I.Act does not warrant any interference by this Court.

6. The appellate court had taken a very lenient view in the matter of sentence. Therefore, the sentence awarded by the appellate 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' time to pay the compensation.

**B. SUDHEENDRA KUMAR,
JUDGE.**

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