

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

Crl.Rev.Pet.No. 1310 of 2015 ()

AGAINST THE JUDGMENT IN CRA 607/2011 of ADDL.SESIONS COURT
(ADHOC)-II, ERNAKULAM DATED 23-01-2013

AGAINST THE JUDGMENT IN ST 1162/2006 of J.M.F.C.-IV, KOCHI
DATED 21-10-2011

REVISION PETITIONER(S)/REVISION
PETITIONER/APPELLANT/ACCUSED:

INDIRA AGED 46 YEARS
W/O. K.P. GIREESHAN,
P & T QUARTERS, B.P. 6
THEVARA, COCHIN-13.

BY ADV. SRI.M.A.SHIHAB

RESPONDENT(S)/STATE AND COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

2. V.R. SATHAYAN, AGED 41 YEARS
S/O. RAMAN, AUGASALA BUILDING, PALAYIL HOUSE
THEKKUMMOODYPADY, PIRAVOM.

FOR R2 BY PUBLIC PROSECUTOR SRI.R. GITESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 15-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Crl.R.P. No. 1310 of 2015

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Dated this the 15th day of October, 2015

ORDER

The revision petitioner is the accused in S.T. No. 1162 of 2006 on the files of the Court of the Judicial Magistrate of First Class -IV, Kochi.

2. The trial Court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to simple imprisonment for three months and to pay fine of Rs. 65,000/-. In the appeal filed against the said conviction and sentence, the appellate court confirmed the said conviction and modified the sentence to imprisonment till the rising of the court and a fine of Rs. 65,000/- under Sec. 138 of the N.I.Act. Aggrieved by the said conviction and sentence, this Revision Petition has been filed.

3. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

4. The prosecution allegation is that the revision petitioner borrowed an amount of Rs. 65,000/- from the complainant and towards the discharge of the said liability, the revision petitioner executed Ext. P1 cheque in favour of the complainant. Complainant presented the said cheque for encashment. However, the same was dishonoured due to insufficiency of funds in the account of the revision petitioner. Statutory notice was issued on behalf of the complainant, which was returned as “unclaimed” as the revision petitioner refused to accept the same, even after getting intimation from the post office. However, the revision petitioner did not make payment of the cheque amount within the statutory period or thereafter.

5. Before the trial Court, PW1 was examined and Exts. P1 to P5 were marked for the prosecution. No evidence was adduced on the side of the defence.

6. The courts below, relying on the evidence adduced by the complainant, 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.

7. 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 fine

B. SUDHEENDRA KUMAR,
JUDGE.

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