

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1369 of 2015 ()

AGAINST THE JUDGMENT IN CRA 308/2010 of ADDL. SESSIONS COURT-I,
THALASSERY DATED 20-12-2014

AGAINST THE JUDGMENT IN ST 9539/2009 of J.M.F.C.-III, KANNUR
DATED 09-07-2010

REVISION PETITIONER(S)/ACCUSED:

K.SHAKIB, AGED 32 YEARS
S/O.ABDUL JALEEL, KURIKKALAKATH (HOUSE)
PUTHIYATHERU PO, CHIRAKKAL, KANNUR DISTRICT.

BY ADVS.SRI.G.S.KRISHNAN KARTHA
SRI.LIJIN THAMBAN
SRI.M.RETHEESH KUMAR

RESPONDENT(S)/COMPLAINANT & STATE:

1. P.HARIS, AGED 31 YEARS
S/O.ABOOBACKER, P HOUSE, VALAPATTANAM PO
KANNUR DISTRICT, PIN-670 010

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

R1 BY ADV. SRI.P.K.RAVISANKAR
R BY PUBLIC PROSECUTOR SRI. V.S. SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 27-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Crl.R.P. No. 1369 of 2015

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Dated this the 27th day of October, 2015

ORDER

The revision petitioner is the accused in S.T. No. 9539 of 2009 on the files of the court of the Judicial Magistrate of First Class-III, Kannur. The trial Court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to simple imprisonment for four months and to pay an amount of Rs. 2,00,000/- to the complainant as compensation 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 and reduced to imprisonment till the rising of the Court and to pay a compensation of Rs. 2,00,000/- to the complainant 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 the revision petitioner borrowed an amount of 2,00,000/- from the complainant and towards the discharge of the said liability, 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 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 evaded the service of notice. The revision petitioner did not pay the cheque amount within the statutory period or thereafter.

4. Before the trial court, PW1 was examined and Exts. P1 to P4 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. No circumstance has been brought to my notice to indicate that the appreciation of evidence 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 Sec. 138 of the N.I. Act does not warrant any interference by this Court. 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 call for 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.

Needless to say that if the revision petitioner has already been arrested in connection with this case, he shall be released forthwith and the execution of sentence shall be kept in abeyance till the expiry of six months as ordered above.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

/truecopy/

P.S. To Judge