

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1393 of 2015 ()

AGAINST THE JUDGMENT IN CRA 117/2014 of ADDL. SESSIONS COURT-II
(SPL. COURT), KOTTAYAM DATED 22-08-2015

AGAINST THE JUDGMENT IN ST 76/2013 of J.M.F.C. – II, ETTUMANUR
DATED 19-03-2014

REVISION PETITIONER(S):

THOMAS T. EPEN, AGED 59 YEARS,
S/O. EPEN, THADATHIL HOUSE,
VILLONNI P.O., ARPOOKKARA, KOTTAYAM DISTRICT

BY ADV. SRI.VIJAI MATHEWS

RESPONDENT(S):

1. VARGHESE T.M., S/O. T.V. MATHEW,
THIRUTHANATHIL HOUSE, KANKKARY P.O.
KOTTAYAM DISTRICT – 686 632
2. THE STATE OF KERALA, REPRESENTED BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI. V.S. SREEJITH FOR R2

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 03-11-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
Crl.R.P. No. 1393 of 2015
.....

Dated this the 3rd day of November, 2015

ORDER

The revision petitioner is the accused in S.T. No. 76 of 2013 on the files of the court of the Judicial Magistrate of First Class-II, Ettumanoor.

2. The trial Court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to simple imprisonment for six months and to pay an amount of Rs. 87,050/- 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 compensation of Rs. 87,050/- to the complainant under Section

357 (3) Cr.P.C. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard both sides.

4. The prosecution case is that towards the discharge of the liability to the complainant, the revision petitioner issued Exts. P1 and P2 cheques in favour of the complainant. The complainant presented the said cheques 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 received by the revision petitioner. However, the revision petitioner did not pay the cheque amount within the statutory period or thereafter.

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

6. The courts below evaluated the oral and documentary

evidence adduced by the complainant and concurrently found that the revision petitioner executed Exts. P1 and P2 cheques 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 appreciation of evidence by the courts below is perverse or incorrect. In the said circumstances, the concurrent finding by 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.

7. In the result, this Revision Petition stands dismissed.

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CrI.R.P. No. 1393 of 2015

However, the revision petitioner is granted six months to pay the compensation.

Dated this the 3rd day of November, 2015.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

Ani/3/11/2015

/truecopy/

P.S. To Judge