

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1397 of 2015 ()

JUDGMENT IN Cr1.A 452/2010 of ADDITIONAL SESSIONS COURT-I, THALASSERY

JUDGMENT IN ST 1514/2009 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT-II, KANNUR

REVISION PETITIONER/APPELLANT/ACCUSED:

MEHAROOF P.C.
S/O.KUNHIMUHAMMED, AGED 45 YEARS
PUTHIYANGADI CHERIYA PURAYIL, AZHIKKAL P.O
KANNUR DISTRICT.

BY ADVS.SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH

RESPONDENTS/COMPLAINANT AND STATE:

1. RAJESH KUMAR
S/O. O.K.MADHAVAN, AGED 40 YEARS, SREESHALAYAM
PUNNAKKAPARA, AZHIKODE P.O, KANNUR DISTRICT - 670 009.
2. STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM 682 031.

R1 BY ADV. SRI.O.D.SIVADAS
R BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

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

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No. 1397 of 2015

Dated this the 11th day of November, 2015

ORDER

The revision petitioner is the accused in S.T.No.1514 of 2009 on the files of the Court of the Judicial Magistrate of First Class-II, Kannur.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced him thereunder to simple imprisonment for six months and to pay a compensation of ₹2,50,000/- to the complainant under Section 357(3) Cr.P.C. In the appeal, 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 ₹2,50,000/- 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 the learned counsel for the petitioner.

4. The prosecution allegation is that the revision

petitioner borrowed an amount of ₹2,50,000/- and towards the discharge of the said liability, the revision petitioner issued Ext.P1 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 to the revision petitioner, 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 P6 were marked for the complainant. No evidence was adduced on the side of the revision petitioner.

6. The courts below, after evaluating the oral and documentary 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 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 by 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 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 to pay the compensation ordered by the appellate court as requested by the learned counsel for the revision petitioner.

Sd/-
B. SUDHEENDRA KUMAR
JUDGE