

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1448 of 2015 ()

JUDGMENT IN Crl.A 384/2010 OF THE ADDITIONAL SESSIONS COURT-I,
THALASSERY
JUDGMENT IN ST 5772/2009 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT-III(MOBILE), KANNUR

REVISION PETITIONER:

K.MUHAMMED KUNHI, AGED 40 YEARS
S/O. IBRAHIM, KEERIYARAKATH HOUSE, HAJIMOTTA P.O
KALLIYASSERY, KANNUR DISTRICT

BY ADVS.SRI.K.R.AVINASH (KUNNATH)
SRI.C.H.ABDUL RASAC

RESPONDENTS:

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1. SRIRAM TRANSPORT FINANCE CO.LTD
SECOND FLOOR HUSSAIN ARCADE, OPP R.T OFFICE
THAVAKKARA, KANNUR-2,
REPRESENTED BY K RAJAN (POWER OF ATTORNEY HOLDER)
 2. THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM
- R1 BY ADV. SRI.RAJESH NAMBIAR
R BY PUBLIC PROSECUTOR SRI.R.GITESH
- R BY SRI.P.JACOB MATHEW

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 17-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No. 1448 of 2015

Dated this the 17th day of November, 2015

ORDER

The accused in S.T.No.5772 of 2009 on the files of the Court of the Judicial Magistrate of First Class-III, Kannur has filed this revision petition challenging the conviction and sentence passed by the courts below under Section 138 of the N.I.Act.

2. Heard both sides.

3. The prosecution allegation is that the revision petitioner issued Ext.P1 cheque in favour of the complainant towards the discharge of the liability to 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.

4. Before the trial court, PW1 to PW3 were examined and Exts.P1 to P11 were marked for the complainant. No evidence was adduced on the side of the revision petitioner.

5. 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 eight 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**

Scl.

True Copy

PA to Judge