IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

Crl.Rev.Pet.No. 881 of 2014 ()
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CRA 6/2014 of SESSIONS COURT,PATHANAMTHITTA
ST 519/2010 of J.M.F.C.-II,PATHANAMTHITTA

REVISION PETITIONER/APPELLANT/ACCUSED:
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SASI MOHAN
THATTAKUNNIL HOUSE, SANTHOSH JUNCTION, MAKKAMKUNNU
PATHANAMTHITTA.

BY ADVS.SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN
SMT.T.J.SEEMA

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:
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1. MUTHOOT LEASING & FINANCE LTD.,
THE COMPANY CHANGED ITS NAME TO MUTHOOT
VEHICLE AND ASSETS FINANCE LTD
MUTHOOT CHAMBERS, KURIAN TOWERS, BANERJEE ROAD
KOCHI, CARRYING ON BUSINESS AT BRANCH OFFICE
2ND FLOOR, ABAN ARCADE, PATHANAMTHITTA
REPRESENTED BY P.A.HOLDER, DILEEP KUMAR
S/O.CHELLAPPAN, MUNDANKAVIL VEEDU, CHENEERKARA
PATHANAMTHITTA- 689577.

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

R1 BY ADV. SRI.S.NIDHEESH
R2 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 23-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**B.SUDHEENDRA KUMAR, J.**

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Crl.R.P.No.881 of 2014

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Dated this the 23rd day of September 2015

<u>O R D E R</u>

The revision petitioner is the accused in S.T. No.519 of 2010 on the files of the Court of the Judicial Magistrate of First Class - II, Pathanamthitta.

2. The revision petitioner was convicted by the trial court under Section 138 of the Negotiable Instruments Act (for short 'the N.I.Act') and sentenced thereunder to simple imprisonment for three months and to pay a compensation of Rs.1,60,000/- to the complainant under Section 357(3) Cr.P.C. with a default clause for simple imprisonment for three months. 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.1,543,640/- 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 revision petitioner and the learned Public Prosecutor.

4. The prosecution allegation is that the revision petitioner availed a loan of Rs.2,30,000/- from the complainant for the purchase of a vehicle on hypothecation, agreeing to re-pay the said amount in installments. However, the revision petitioner made default in payment of installments. Towards the discharge of the said liability of the revision petitioner to the complainant, the revision petitioner issued Ext.P1 cheque

in favour of the complainant. The said cheque was presented for encashment. However, the same was dishonoured due to insufficiency of funds in the account of the revision petitioner. Statutory notice was issued to the revision petitioner, which was received by the revision petitioner. However, the revision petitioner did not make payment of the cheque amount within the statutory period or thereafter.

5. Before the court below, PW1 was examined and Exts.P1 to P12 were marked for the complainant. Exts.D1 to D3 were marked for the revision petitioner.

6. The learned counsel for the revision petitioner has argued that the evidence of PW1 and the documents produced by the prosecution are not at all sufficient to prove the execution of Ext.P1 cheque by the complainant,

as contemplated under Section 138 of the N.I.Act and hence the revision petitioner is entitled to be acquitted. PW1 is the power of attorney holder of the complainant. PW1 stated that the revision petitioner received Rs.2,30,000/-from the complainant on 21.8.2006. It was further stated by PW1 that out of the said amount, the revision petitioner repaid Rs.61,644/-. PW1 admitted in cross-examination that the vehicle was sold by the complainant for an amount of Rs.1,33,000/- on 27.2.2008.

7. Ext.P12 is the statement of account of the revision petitioner. Ext.P12 does not show the receipt of the amount of Rs.1,33,000/- by the complainant by way of sale of the vehicle. PW1 also admitted that the said amount was not shown in Ext.P12 account statement. Ext.P12 would show that it contained statement upto 19.8.2011. In

the third page of Ext.P12, an amount of Rs.1,53,640/- is written as the total amount. However, it is not discernible from Ext.P12 as to when the said amount became due. It is also not discernible from Ext.P12 with regard to the amount due as on the date of issue of Ext.P1 cheque. PW1 stated that Ext.P1 cheque was issued 2 to 3 days prior to the date shown in Ext.P1 cheque. The date shown in Ext.P1 cheque is 10.2.2010. Ext.P12 does not show that the amount covered by Ext.P1 cheque was due to the complainant from the revision petitioner on 10.02.2010. PW1 in cross-examination stated that the exact amount paid by the revision petitioner could be available only in the loan account statement. However, apart from the status report as on 10.2.2010, no loan account register/statement had been produced by the complainant. It is also strange to note that even though it appears from the heading of Ext.P12 that Ext.P12 is the status report as on 10.2.2010, Ext.P12 would show that it contains the account details upto 19.8.2011. It is not discernible as to why the complainant did not produce the account statement rather than the status report to show that the amount covered by Ext.P1 cheque was due to the complainant.

8. The revision petitioner had a contention that the revision petitioner had given blank signed cheques for each installment and when the revision petitioner failed to pay two installments, the complainant had mis-utilised one of the said blank cheques and filed the present complaint. It is clear from the evidence of PW1 itself that the revision petitioner had paid an amount of Rs.61,644/- to the complainant out of the amount borrowed by him. The

evidence of PW1 would further show that an amount of Rs.1,33,000/- was received by the complainant by way of the sale of the vehicle. The total amount availed by the revision petitioner was Rs.2,33,000/-. If that be so, it is not discernible as to how the amount covered by the cheque, namely, Rs.1,53,640/-, could be due to the complainant as on the date of issue of the cheque. Having gone through the relevant inputs as discussed above, I am fully convinced that the evidence of PW1 and Ext.P12 are not at all sufficient to prove the execution of Ext.P1 cheque as contemplated under Section 138 of the N.I.Act. There is no other material before the Court to prove that the revision petitioner executed Ext.P1 cheque as contemplated under Section 138 of the N.I.Act.

9. In view of the above reasons, the evidence

appreciated by the courts below cannot be correct. Having gone through the relevant inputs, I am satisfied that the concurrent finding of the courts below regarding the verdict of guilty, conviction and sentence under Section 138 of N.I.Act cannot be sustained and consequently I set aside the same.

In the result, this revision petition stands allowed setting aside the conviction and sentenced passed by the courts below under Section 138 of the N.I.Act and the revision petitioner stands acquitted for the said offence. The bail bond of the revision petitioner stands cancelled and he is set at liberty. sd

**B.SUDHEENDRA KUMAR,**
**JUDGE**

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*// True Copy//*

*PA to Judge*