

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

Crl.Rev.Pet.No. 894 of 2014 ()

JUDGMENT IN Crl.A 71/2012 of D.C. & SESSIONS COURT, KOLLAM DATED  
11-03-2014

JUDGMENT IN CC 278/2009 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-IV,  
PUNALUR DATED 22-02-2012

REVISION PETITIONER/APPELLANT/ACCUSED:

S.M.SHAFI,  
AGED 45 YEARS, S/O.P.K. MUHAMMED KUNJU, MASTER TRADERS  
P.O. JUNCTION, PUNALUR, KOLLAM DISTRICT.

BY ADVS.SRI.MANOJ RAMASWAMY  
SMT.SANJANA R.NAIR  
SMT.K.G.SAROJINI

RESPONDENT/RESPONDENT/COMPLAINANT & STATE:

1. ASHOKA BABU  
AGED 55 YEARS, S/O. VELAYUDHAN, ASOKA BHAVAN  
KARYARA, VILAKKUDY, PATHANAPURAM  
KOLLAM DISTRICT - 691508.
2. STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, ERNAKULAM.

R BY PUBLIC PROSECUTOR SRI.R.GITESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD  
ON 28-10-2015, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

SCL.

**B. SUDHEENDRA KUMAR, J.**

-----  
Crl.R.P. No.894 of 2014  
-----

Dated this the 28<sup>th</sup> day of October, 2015

**ORDER**

The revision petitioner is the accused in C.C.No.278 of 2009 on the files of the court of the Judicial Magistrate of First Class-IV, Punalur.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced him thereunder to simple imprisonment for three months and to pay a compensation of ₹1,10,000/- 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 ₹1,10,000/- 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 ₹1,00,000/- from the complainant 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 P4 were marked for the complainant. The revision petitioner himself got examined as DW1.

6. The courts below, after evaluating the oral and documentary evidence adduced by the parties, 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. In the said circumstances, 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 time to pay the compensation.

**Sd/-**  
**B. SUDHEENDRA KUMAR**  
**JUDGE**