

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. 960 of 2014 ()

JUDGMENT IN CrI.A 239/2012 OF THE I ADDITIONAL SESSIONS COURT, KOLLAM

JUDGMENT IN ST 569/2011 OF THE CHIEF JUDICIAL MAGISTRATE COURT,
KOLLAM

REVISION PETITIONER(S) /APPELLANT/ACCUSED:

VINAYAN, AGED 54 YEARS,
VINEETHA MANDIRAM, MYLODE P.O., POOYAPPALLY VILLAGE
KOTTARAKKARA TALUK, KOLLAM DISTRICT, PIN-691 537.

BY ADVS.SRI.M.KANNAN
SRI.AJEESH S.BRITE
SRI.K.G.KAILASNATH

RESPONDENTS/RESPONDENTS/STATE AND COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.
2. BINU
S/O.SASANKAN, VISHNU NAGAR, VADAKKEVILA P.O.
KOLLAM, PIN-691 010.

R2 BY ADV. SRI.Y.JAFAR KHAN
R1 BY PUBLIC PROSECUTOR SRI.R.GITESH

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

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.960 of 2014

Dated this the 3rd day of November, 2015

ORDER

The revision petitioner is the accused in S.T.No.569 of 2011 on the files of the Court of the Judicial Magistrate of First Class, Kollam.

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 an amount of ₹1,00,000/- with interest at the rate of 9% per annum from the date of cheque, 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 ₹1,00,000/- to the complainant under Section 357(3) Cr.P.C. with interest at the rate of 9% per annum as directed by the trial court. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard both sides.

4. The case of the complainant is that towards the discharge of the liability to the complainant, 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.

It has been submitted by the learned counsel for the second respondent that the revision petitioner had already paid the amount of compensation ordered by the appellate court.

An endorsement in this regard has been also made by the learned counsel for the second respondent. In view of the above endorsement and submission of the learned counsel for the second respondent, I make it clear that the revision petitioner need not pay any further amount as compensation to comply with the direction of payment of compensation by the appellate court.

Sd/-
B. SUDHEENDRA KUMAR
JUDGE

Scl/04.11.2015

True Copy

PA to Judge