

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

Crl.Rev.Pet.No. 996 of 2014 ()

CRA 101/2013 of ADDL. SESSIONS COURT - IV, KOTTAYAM
ST 53/2010 of J.M.F.C - II, CHENGANACHERRY

REVISION PETITIONER/APPELLANT/ACCUSED:

K.M.SABU, AGED 52 YEARS
S/O MATHAI, PROPRIETOR, HOTEL SEHIYAN
NEAR YMCA, THIRUVALLA, PATHANAMTHITTA

BY ADV. SRI.M.J.THOMAS

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

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1. BABU ANTONY
PUTHENPARAMBIL, PUZHAVATHU, CHANGANACHERRY- 686631.
 2. THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM

R1 BY ADV. SRI.K.SURESH
R1 BY ADV. SMT.DEEPTHI S.MENON
R2 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 15-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.996 of 2014

Dated this the 15th day of September 2015

ORDER

The revision petitioner is the accused in S.T.No.53 of 2010 on the files of the Court of Judicial Magistrate of First Class –II, Changanassery.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act (for short 'the N.I. Act') and sentenced him thereunder to simple imprisonment for six months and a fine of Rs.1,35,000/- with a default clause for simple imprisonment for one month. In the appeal filed against the said conviction and sentence, the appellate court as per

judgment in Crl. Appeal 101 of 2013 confirmed the conviction and modified the sentence to imprisonment till the rising of the court and a fine of Rs.1,35,000/- with a default clause for simple imprisonment for three months. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard.

4. The case of the complainant is that the revision petitioner borrowed an amount of Rs.1,35,000/- from the complainant and towards the discharge of the said liability, the revision petitioner issued Ext.P1 cheque in favour of the complainant. The said cheque was presented for encashment. However, the same was dishonoured stating that the account was closed by 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 and PW2 were examined and Exts.P1 to P6 were marked for the complainant and DW1 was examined for the revision petitioner.

6. The courts below, relying on 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.

7. The learned counsel for the revision petitioner has argued that even though it is stated in the complaint that the

cheque was drawn in the name of the complainant, the cheque available before the court is a cash cheque and in the said circumstances, the revision petitioner is entitled to be granted the benefit of doubt. It is true that in the complaint it is stated that the cheque was drawn in the name of the complainant. PW1 stated that PW1 was not able to read and understand English. It is seen from the complaint that the copy of Ext.P1 cheque was produced before the court along with the complaint. Therefore, it is clear that the cheque was with the lawyer at the time of drafting the complaint. So, there can be no doubt that the above said mistake was committed in the office of the lawyer while drafting the complaint and in the said circumstances, it is not proper and correct to take the advantage of the same by the revision petitioner,

particularly when PW1 proved Ext.P1 cheque before the court and stated that Ext.P1 was the cheque given to PW1 by the revision petitioner. Since there is concurrent finding on facts by the courts below, 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 finding of the courts below was perverse or incorrect. The courts below concurrently found the revision petitioner guilty under Section 138 of the N.I. Act and convicted him thereunder. Having gone through the relevant inputs, I do not find any reason to interfere with the concurrent finding of the courts below that the revision petitioner committed the offence under Section 138 of the N.I. Act. The appellate court had taken a very lenient view in the matter of sentence and in the said

circumstances, the sentence awarded by the appellate court does not call for any interference by this court.

In the result, this revision petition stands dismissed.

The revision petitioner is granted six months time to pay the fine, as requested by the learned counsel for the revision petitioner.

I make it clear that the amount, if any, already deposited by the revision petitioner pursuant to the order of this court or the appellate court, will be treated as part payment of fine in this order.

Sd//

**B.SUDHEENDRA KUMAR,
JUDGE.**

dl

/ True copy /

PA to Judge