

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

Crl.Rev.Pet.No. 1110 of 2014 ()

AGAINST THE JUDGMENT IN CRA 282/2012 of I ADDL.SESIONS
JUDGE, KOLLAM DATED 18-12-2013

AGAINST THE JUDGMENT IN ST 110/2010 of JUDICIAL FIRST CLASS
MAGISTRATE - III, KOLLAM DATED 26-09-2012

REVISION PETITIONER(S)/REVISION
PETITIONER/APPELLANT/ACCUSED:

GEORGE PATTATHANAM
NISHA BHAVAN, PUNUKKANNUR, PERUMPUZHA P.O
KOLLAM

BY ADV. SRI.LEO GEORGE

RESPONDENT(S)/RESPONDENTS/STATE AND RESPONDENT/STATE &
COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM KOCHI 31

2. B.GOPINATHAN, PANKAJA VILASAM,
ASRAMAM P.O, KOLLAM 691 002

BY PUBLIC PROSECUTOR STI. GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 15-09-2015 THE COURT ON 25-09-2015, PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Crl.R.P. No. 1110 of 2014
.....

Dated this the 25th day of September 2015

ORDER

The revision petitioner is the accused in S.T. No. 110 of 2010 on the files of the Court of the Judicial Magistrate of First Class – III, Kollam.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 (“the N.I.Act” for short) and sentenced him thereunder to simple imprisonment for one month and a compensation of Rs. 75,000/- to the complainant under Sec. 357 (3) Cr.P.C.. with a default clause for simple imprisonment for one month. In the appeal, the appellate court confirmed the conviction and modified the sentence to imprisonment till the raising of the court and to pay compensation of Rs. 75,000/- to the complainant under Section

357 (3) Cr.P.C. Aggrieved by the said conviction and sentence, this Revision Petition was filed.

3. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

4. The prosecution allegation is that the revision petitioner borrowed an amount of Rs. 75,000/- 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 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 P5 were marked for the complainant. Exts. D1 to D6 were marked for the revision petitioner.

6. PW1 had given evidence in accordance with the contentions in the complaint. The revision petitioner had a contention that he availed a loan from Sree Narayana Prarthana Samithi, Kunnathur and at the time of availing the said loan, he entrusted a blank signed cheque with PW1, who was the then President of the said Samithi. The said cheque was misutilised by the complainant to file the present complaint. During the cross-examination of PW1 on 2-2-2011, he stated that he never heard of Sree Narayana Prarthana Samithi. He also stated that he had seen the accused only once, which was on the day of Sree Narayana Guru Jayanthi. PW1 had no other acquaintance with the revision petitioner. It is true that when he was subsequently cross-examined on 4-5-2012, he stated that he was a member of

the said Samithi. He also stated the name of the President of the said Prarthana Samithi. Subsequently, in re-examination, he stated that the accused was a colleague of PW1. PW1 further stated during his cross-examination that he had paid an amount of Rs. 75,000/- to the revision petitioner by withdrawing the amount from the Bank in Quilon. However, he stated that it was difficult for him to produce any document to show that he had withdrawn the amount from the bank as stated by him. PW1 admitted that the cheque was not filled up in his presence. Eventhough the accused had a contention that the accused availed a loan from Sree Narayana Prathana Samithi, PW1 initially denied to have any acquaintance with the said Samithi eventhough he was also a member of the said Samithi. It is not discernible as to why PW1 stated that it was difficult for him to produce the document to prove that he had withdrawn the amount from the Bank to give the same to the revision petitioner.

About the acquaintance of PW1 with the revision petitioner also, PW1 was found to be not straight forward. PW1 did not see the filling up of the cheque or signing the same by the revision petitioner. The evidence of PW1 would show that Ext.P1 was not executed in his presence. Having gone through the evidence of PW1, I am of the view that the evidence of PW1 is not sufficient to hold that the accused executed Ext. P1 cheque as contemplated under Section 138 of the N.I.Act.

7. Normally, this Court will not be re-appreciating the evidence already appreciated by the courts below. However, in this case, the appreciation of evidence by the courts below was not correct. Therefore, this Court has re-appreciated the evidence and found that the evidence of PW1 is not sufficient to prove the execution of Ext.P1 cheque. There is no other material before the court to prove the execution of Ext.P1 cheque. Consequently, the

conviction and sentence passed by the courts below cannot be sustained.

In the result, this Revision Petition stands allowed setting aside the conviction and sentence passed by the Courts below under Section 138 of the N.I.Act and the revision petitioner is acquitted for the said offence. The bail bound of the revision petitioner stands cancelled and he is set at liberty.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. to Judge

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