

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

Crl.Rev.Pet.No. 1225 of 2014 ()

AGAINST THE JUDGMENT IN CRA 520/2011 of ADDL SESSIONS COURT
- IV, THIRUVANANTHAPURAM DATED 09-04-2014

AGAINST THE JUDGMENT IN CC 94/2007 of J.M.F.C.-VII,
TRIVANDRUM DATED 22-09-2011

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

RAJENDRAN NAIR,
CRA 206, ANJALAI, TC 29/1789
"A" BLOCK, T R SUKUMARAN NAIR ROAD, PERUMTHANNI
VALLAKADAVU P.O., THIRUVANANTHAPURAM.

BY ADVS.SRI.SUMAN CHAKRAVARTHY
SMT.K.R.RIJA

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

1. RAJASEKHARAN NAIR,
GOUREESANKARAM, KAITHAMUKKU, THIRUVANANTHAPURAM.

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

R1 BY ADV. SRI.KILLIYOOR P.GOPALAKRISHNAN NAIR
& BY ADV. SRI.C.P.BHADRAKUMARI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 17-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
Crl.R.P. No. 1225 of 2014
.....

Dated this the 17th day of September, 2015

ORDER

The revision petitioner is the accused in C.C. No. 94 of 2007 on the files of the Court of the Judicial Magistrate of First Class-VII, Thiruvananthapuram.

2. The revision petitioner was convicted by the trial court under Section 138 of the Negotiable Instruments Act, 1881 ("the N.I.Act" for short) and sentenced him thereunder to imprisonment till the rising of the Court and to pay compensation of Rs. 1,50,000/- to the complainant under Section 357 (3) Cr.P.C. The appeal filed challenging the above conviction and sentence was dismissed by the appellate court as per judgment in Crl.Appeal No. 520 of 2011. Aggrieved by the said conviction and sentence, this Revision Petition has been filed.

2. Heard the learned counsel for the petitioner.

3. The case of the complainant is that the revision petitioner borrowed an amount of 1,50,000/- from the

complainant for his urgent business purpose 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 accounts 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.

4. Before the trial court, PW1 was examined and Exts. P1 to P5 were marked for the complainant. No evidence was adduced on the side of the defence.

6. The learned counsel for the revision petitioner argued that there is no demand for money in Ext. P3 statutory notice and in the said circumstances, the complaint filed by the complainant is not maintainable. The operative of Ext. P3 is extracted hereunder:-

“Therefore, you are hereby given 15 days time from the date of receipt of this notice, to pay off the said amount of Rs. 1,50,000/- covered by the said cheque to my client, failing which appropriate legal proceedings, including proceedings under Section 138 of the

Negotiable Instruments Act will be initiated against you, without any further reference to you”.

From the above extract, it is clear that there was demand for payment of the cheque amount within 15 days of receipt of the notice. In the said circumstances, there is no substance in the argument advanced by the learned counsel for the revision petitioner in this regard.

7. It has been further argued by the learned counsel for the revision petitioner that Ext. P1 cheque was not written by the revision petitioner even as per the evidence of PW1 and hence, he is entitled to benefit of doubt. It is in the evidence of PW1 that a friend of the revision petitioner also accompanied the revision petitioner to PW1 and the friend of the revision petitioner filled everything in Ext. P1 cheque in the presence of the revision petitioner and PW1. In view of the above evidence of PW1, I am unable to accept the argument of the learned counsel for the revision petitioner in this regard.

8. The courts below, considered by the oral and documentary evidence adduced by the complainant and came to the conclusion that the revision petitioner had executed Ext. P1 cheque as contemplated under Section 138 of the NI Act. The defence set up by the revision petitioner was also repelled by the

courts below. 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 appreciation of evidence by the courts below was perverse or incorrect. In the said circumstances, the concurrent finding of the courts below that the revision petitioner committed the offence under Section 138 of the N.I.Act does not warrant any interference by this Court.

9. The courts below had taken a very lenient view in the matter of sentence. In the circumstances, the sentence awarded by the courts below also does not call for any interference by this Court

10. In the result, this revision petition stands dismissed. The revision petitioner is granted six months' time to make payment of fine.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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