

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

Crl.Rev.Pet.No. 1308 of 2014 ()

**AGAINST THE JUDGMENT IN CRA 408/2011 of ADDL. D.C. & SESSIONS COURT - V,
KOTTAYAM DATED 13-06-2014**

**AGAINST THE JUDGMENT IN ST 37/2011 of J.M.F.C.III, KANJIRAPPALLY DATED 26-09-
2011**

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

**RATHEESH A.R AGED 29 YEARS
P&T ELECTRICALS, OPPOSITE TELEPHONE EXCHANGE
MUNDAKKAYAM VILLAGE.**

**BY ADVS.SRI.LIJI.J.VADAKEDOM
SRI.RAJEEV JYOTHISH GEORGE**

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

**1. M.C.CHACKO
S/O CHACKO, MOOLEPARAMBIL HOUSE, MUNDAKKAYAM VILLAGE.**

**2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.**

**R1 BY ADV. SRI.PREMCHAND R.NAIR
R2 BY PUBLIC PROSECUTOR V.S.SREEJITH**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14-
10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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B.SUDHEENDRA KUMAR, J.

Cr.R.P.No.1308 of 2014

Dated this the 14th day of October, 2015

JUDGMENT

The revision petitioner is the accused in S.T.No.37/2011 on the files of the Court of the Judicial Magistrate of First Class - III, Kanjirappally.

2. The trial court convicted the revision petitioner under Section 138 of NI Act and sentenced him thereunder to simple imprisonment for 1 year and to pay a compensation of Rs.1,50,000/- to the complainant under Section 357(3) Cr.P.C. The Appellate Court confirmed the conviction and modified the sentence to imprisonment till the raising of the Court and a compensation of Rs.1,50,000/- to the complainant under Section 357 (3) Cr.P.C.

3. Heard both sides.

4. The prosecution allegation is that the revision petitioner borrowed an amount of Rs. 1,50,000/- from the complainant and towards the

discharge of the said liability, the revision petitioner executed Ext.P1 cheque in favour of the complainant. The complainant presented the said cheque for encashment. However the same was dishonored due to insufficiency of funds in the account of the revision petitioner. Statutory notice was issued on behalf of 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, PW 1 and PW 2 were examined and Exts P1 to P5 were marked for the prosecution. No evidence was adduced on the side of the defence.

6. The learned counsel for the revision petitioner has argued that the source of income for advancing the amount covered by Ext.P1 was not proved by the complainant and hence, it cannot be said that Ext.P1 cheque was executed as contended by the complainant. The courts below concurrently

found that PW1 had advanced the amount from the amount of Rs.7,00,000/- received by him by way of sale of his property. In the said circumstances, the argument in this regard does not hold good.

7. 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 NI Act. The defence set up by the revision petitioner was 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 appreciation of evidence by the courts below is perverse or incorrect. In the said circumstances, the concurrent finding of the courts below that the revision petitioner committed the offense under Section 138 of the NI Act does not warrant any interference by this Court.

8. As regards the sentence, it has been submitted by the learned advocates that both the parties have consented that the matter could be settled for an amount of Rs.90,000/-. Therefore, both sides have fairly conceded that the sentence can be reduced to a fine of Rs.90,000/-. In view of the submission at the bar, the sentence awarded by the Appellate Court stands modified and reduced to a fine of Rs.90,000/-. In default of payment of fine, the revision petitioner shall undergo simple imprisonment for 1 month. In the event of realisation of the fine amount, the entire amount shall be given to the complainant u/s 357 (1) (b) Cr.P.C. The amount already deposited by the revision petitioner will be treated as part payment of the fine directed by this Court.

9. The 1st respondent shall be at liberty to withdraw the amount already deposited by the revision petitioner. The revision petitioner is granted three months to pay the balance amount.

I make it clear that the payment directly made to the complainant will be treated as sufficient compliance of payment of fine ordered by this Court, provided an affidavit in this regard shall be filed by the complainant before the trial court.

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

//TRUE COPY//

PA TO JUDGE

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