

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

Crl.Rev.Pet.No. 2399 of 2013 ()

JUDGMENT IN Cr1.A 475/2010 OF THE SESSIONS COURT, THRISSUR

JUDGMENT IN CC 140/2009 OF THE JUDICIAL FIRST CLASS MAGISTRATE - II,
CHALAKUDY

REVISION PETITIONER/APPELLANT/ACCUSED:

K.C.SUDHEER, AGED 36,
S/O.CHANDRASEKHARA PANICKER,
KILLIKKATTU, KALAVOOR P.O,
KATTUR, ALAPPUZHA.

BY ADV. SRI.C.A.RAJEEV

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

1. KONNUPARAMBAN TRADERS, CHALAKUDY
REPRESENTED BY ITS PROPRIETOR, ITTOOP,
S/O. KONNUPARAMBAN OUSEPH, CHALAKUDY,
EAST CHALAKUDY VILLAGE, REPRESENTED BY HIS
POWER OF ATTORNEY HOLDER, DIVAKARAN, AGED 47,
S/O. MULLAPARAMBIL VELAYUDHAN, PALAPPILLI DESOM
KORATTY, MUKUNDAPURAM TALUK, CHALAKUDY.
2. STATE OF KERALA, REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.K.A.SHAMSUDEEN
R1 BY ADV. SRI.K.J.MOHAMMED ANZAR
R BY PUBLIC PROSECUTOR SRI. V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 28-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No. 2399 of 2013

Dated this the 28th day of October, 2015

ORDER

The revision petitioner is the accused in C.C.No.140 of 2009 on the files of the Court of the Judicial Magistrate of First Class - II, Chalakudy.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced him to simple imprisonment for six months and a fine of ₹60,000/-. In the appeal, the conviction was confirmed and the sentence was modified and reduced to imprisonment till the rising of the court and a compensation of ₹70,000/- to the complainant under Section 357 (3) Cr.P.C. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard both sides.

4. The prosecution allegation is that the revision petitioner owed a sum of ₹70,000/- to the complainant in

connection with the business transaction between the complainant and the revision petitioner. 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 on behalf of the complainant, which was received by the revision petitioner. However, he did not pay the cheque amount within the statutory period or thereafter.

5. Before the trial court, PW1 and PW2 were examined and Exts.P1 to P8 were marked for the complainant. No evidence was adduced on the side of the defence.

6. PW1 is the power of attorney holder of the complainant. PW1 filed affidavit in lieu of his examination-in-chief reiterating the contentions in the complaint. PW1 stated in his examination-in-chief that the revision petitioner issued Ext.P1 cheque in favour of the complainant towards the discharge of the liability of the revision petitioner to the

complainant in connection with a business transaction. However, during the cross-examination, PW1 stated that he was not aware about the business transaction between the complainant and the revision petitioner. During the cross-examination, PW1 further stated that PW1 was present at the time of borrowing money by the revision petitioner from the complainant. Even though PW1 stated in the affidavit that he had knowledge with regard to the transaction involved in this case, his evidence in cross-examination would show that he was not having direct knowledge with regard to the transaction in this case. PW1 is only the power of attorney holder of the complainant. The Apex Court in **Narayan v. State of Maharashtra [2013 (4) KLT 21 (SC)]** held in paragraph 26 that the power of attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transactions. It has further held by the Apex Court in *Narayanan (supra)* that it is required by the complainant to make specific assertion as to the knowledge of the power of attorney holder in the said

transaction explicitly in the complaint and the power of attorney holder who has no knowledge regarding the transactions cannot be examined as a witness in the case. In this case, there is no assertion in the complaint with regard to the knowledge of the power of attorney holder regarding in the transaction. Therefore, it has to be held that PW1 had no knowledge with regard to the transaction involved in this case and consequently, the evidence of PW1 is not at all sufficient to hold that the revision petitioner executed Ext.P1 cheque in favour of the complainant. It is also to be noted that PW1 did not state that the revision petitioner had executed Ext.P1 cheque in his presence. There is no other evidence before the court to prove the execution of Ext.P1 cheque by the revision petitioner. PW1 stated in his cross-examination that the amount covered by Ext.P1 cheque finds place in the 'income tax return' of the complainant. However, no such 'income tax return' had been produced before the court to prove the same. The courts below failed to appreciate the above aspects before coming to the conclusion that the revision petitioner executed

Ext.P1 cheque as contemplated under Section 138 of the N.I.Act.

7. Having gone through the relevant inputs, I am satisfied that the complainant failed to establish that the revision petitioner executed Ext.P1 cheque as contemplated under Section 138 of the N.I.Act and consequently, the verdict of guilty, 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 offence under Section 138 of the N.I.Act. The bail bond of the revision petitioner stands cancelled and he is set at liberty.

Sd/-

**B. SUDHEENDRA KUMAR
JUDGE**

ScI/28.10.2015

True Copy

PA to Judge .