IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

Crl.Rev.Pet.No. 1858 of 2014 ()

AGAINST THE JUDGMENT IN CRA 566/2013 of ADDL. SESSIONS COURT - V, KOZHIKODE DATED 23-07-2014

AGAINST THE JUDGMENT IN CC 821/2012 of J.M.F.C.-I,KOZHIKODE DATED 29-10-2013

REVISION PETITIONER(S)/APPELLANT/PETITIONER:

THARA SURESH M.K. AGED 39 YEARS
S/O.SURESH E., VADOOR MEETHAL HOUSE
NEAR NEW WATER TANK, POTTAMMAL, NELLIKKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. CALICUT CITY SERVICE CO-OPERATIVE BANK LTD.
   MAIN BRANCH, LINK ROAD, KOZHIKODE
   REPRESENTED BY ITS AUTHORIZED
   REPRESENTATIVE SAJAN R. CHANDRAN 673007

2. STATE OF KERALA
   REPRESESNTED BY THE PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM ,
   KOCHI - 682 031

R1 BY ADVS. M/s.B.S.SWATHY KUMAR, REMYA MURALI,
A.K.RAJESH, & VENKATESH GOPI
BY PUBLIC PROSECUTOR SRI. R. GITHESH FOR R2

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 22-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Crl.R.P. No. 1858 of 2014

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Dated this the 22nd September, 2015

ORDER

Revision Petitioner is the accused in C.C. No. 821 of 2012 on the files of the Court of the Judicial Magistrate of First Class-I, Kozhikode. The revision petitioner was convicted by the trial court under Section 138 of the N.I. Act and sentenced him thereunder to simple imprisonment for three months and a fine of Rs. 1,75,000/- with a default clause for simple imprisonment for three months. In the appeal, the conviction and sentence were confirmed as per judgment in Crl.Appeal No. 566 of 2013.

2. Heard both sides.

3. The prosecution case is that the revision petitioner availed a loan of Rs. 1,50,000/- from the complainant on

23-12-2005 agreeing to repay the said amount in 36 monthly instalments. As on 1-4-2012, an amount of Rs. 1,53,762/- was due to the complainant from the revision petitioner. Towards the discharge of the said liability, the revision petitioner issued Ext. P2 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. However, since the revision petitioner did not incline to accept the same, it was returned with the endorsement "unclaimed". The revision petitioner did not pay the cheque within the statutory period or thereafter.

4. Before the court below, PW1 was examined and Exts. P1 to P6 were marked for the complainant. Exts. D1 and D2 were marked for the revision petitioner.

5. PW1 is the authorised representative of the complainant.

PW1 had given evidence in tune with the contentions in the complaint. PW1 had stated during the cross-examination that the revision petitioner paid an amount of Rs. 90,000/- to the bank out of the amount availed by him. It was admitted by PW1 that the above said amount was collected through the agent of the bank namely; Ramarajan. Ext. D2 relates to the extract of the Daily Deposit Ledger. Ext.D1 was the demand notice issued by the Secretary of the complainant, which was admitted by PW1 during his cross-examination. It is stated in Ext. D1 that an amount of Rs. 93,893/- was due as on 5-10-2007 out of the amount of loan availed from the bank on 23-12-2005. The revision petitioner had a consistent contention that the revision petitioner joined in a Group Deposit Scheme conducted by the complainant and obtained an amount of Rs. 1,00,000/- as loan from the said Scheme. At the time of availing the amount, he handed over a blank signed cheque to the above said Ramarajan, the agent of the complainant. The revision petitioner had repaid the entire amount at the rate of Rs. 300/- per day through the above said Ramarajan. However, the complainant, thereafter, misutilised the above said blank signed cheque issued by the revision petitioner to the said Ramarajan and filed the present complaint.

6. Eventhough the revision petitioner had a contention that the amount covered by Ext. P2 cheque was not due to the complainant from the revision petitioner, the complainant did not incline to produce the account details regarding the loan transaction involved in this case. Going by the evidence of PW1, the revision petitioner had availed only an amount of Rs. 1,50,000/- from the complainant. The date of availing the loan was 23-12-2005. As per the evidence of PW1, an amount of Rs. 1,53,762/- was due to the complainant from the revision

petitioner as on 1-4-2012. PW1 admitted that an amount of nearly Rs.90,000/- had already been paid by the revision petitioner out of the amount availed by her from the complainant. If that be so, it is not discernible as to how an amount of Rs. 1,53,762/- was due as on the date of issuance of the Ext. P2 cheque. The ledger extract of the account of the revision petitioner was not produced before the court by the complainant. Therefore, it is not discernible as to how the amount covered by Ext. P2 cheque was due to the complainant from the revision petitioner as on the date of issuance of Ext. P2 cheque.

6. Having gone through the relevant inputs as discussed above, including Ext. D1, I am of the view that the evidence available in this case would probabilise the contention of the revision petitioner that the amount covered by Ext. P2 cheque was not due to the complainant from the revision petitioner as on the date of issuance of Ext. P2 cheque. When there is

concurrent finding on facts, ordinarily, this Court will not be interfering with the same unless the finding is perverse or incorrect. Having gone through the relevant inputs, I am satisfied that the appreciation of evidence by the courts below was not correct. Since there is no material before the court to prove that the amount covered by Ext. P1 cheque was due to the complainant from the revision petitioner as on the date of issuing Ext. P2 cheque, it has to be held that the complainant failed to establish that the revision petitioner committed the offence under Section 138 of the N.I.Act and consequently, the verdict of guilty, conviction and sentence passed by the trial Court cannot be sustained.

7. In the result, the revision petition stands allowed, setting aside the conviction and sentence passed by the courts below under Sec. 138 of the N.I.Act and the revision petitioner is

acquitted for the said offence. The bail bond of the revision petitioner stands cancelled and he is set at liberty.

Needless to state that the amount, if any, deposited by the revision petitioner pursuant to any order passed by this Court or the appellate court will be returned to the revision petitioner on proper application.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. to Judge