

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1971 of 2014 ()

AGAINST THE JUDGMENT IN CRA 721/2011 of ADDL. SESSIONS COURT - VIII,
ERNAKULAM DATED 25-09-2014

AGAINST THE JUDGMENT IN CC 153/2010 of J.M.F.C.-I,KOCHI DATED 19-11-2011

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

GIRISH C.M., AGED 39 YEARS
MANAGING PARTNER, "ETHOS HOMES", 2ND FLOOR
SANTHI ARCADE, K.C.JOSEPH ROAD, PANAMPILLY NAGAR
KOCHI.

BY ADVS.SRI.SANTHOSH G. PRABHU
SRI.A.B.XAVIER

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. RUPESH KUMAR P.A., , AGED 45 YEARS
S/O.ASOKAN, PATTUPARAMBIL HOUSE, ELAMKUNNAPPUZHA
POOKKAD, KOCHI-680513.

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

R1 BY ADV. SRI.K.A.RASHEED
BY PUBLIC PROSECUTOR SRI.V.S. SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
29-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....

Crl.R.P. No. 1971 of 2014

.....

Dated this the 29th day of October, 2015

ORDER

The revision petitioner is the accused in C.C. No. 153 of 2010 on the files of the court of the Judicial Magistrate of First Class-I, Kochi. The trial Court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to simple imprisonment for six months and a fine of Rs.. 2,50,000/- . In the appeal filed against the said conviction and sentence, the conviction was confirmed and the sentence was modified and reduced to imprisonment till the rising of the Court and a fine of Rs. 2,50,000/-. Aggrieved by the said conviction and sentence, this revision petition has been filed.

2. Heard both sides.

3. The prosecution allegation is that the revision petitioner

borrowed an amount of 2,50,000/- 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 dishonoured due to insufficiency of funds in the account of the revision petitioner. Statutory notice was issued on behalf of the complainant, which was returned as unclaimed as the revision petitioner evaded the service of notice even after getting intimation from the postal authorities. The revision petitioner did not pay 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. DW1 and DW2 were examined and Exts. D1 to D3 (a) were marked for the defence.

5. The courts below, After evaluating the oral and documentary evidence adduced by the parties, concurrently

found that the revision petitioner executed Ext. P1 cheque as contemplated under Section 138 of the N.I. Act. The defence set up by the revision petitioner was also turned down 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 by the courts below that the revision petitioner committed the offence under Sec. 138 of the N.I. Act does not warrant any interference by this Court.

6. The appellate court had taken a very lenient view in the matter of sentence. Therefore, the sentence awarded by the appellate court also does not call for any interference by this Court.

In the result, this Revision Petition stands dismissed.

However, the revision petitioner is granted six months' to pay the fine.

Needless to state that if any amount had been already deposited by the revision petitioner in connection with this case before the trial Court, the revision petitioner need to deposit only the balance amount, in compliance with the direction of payment of fine. I make it clear that, if any amount is deposited by the revision petitioner, the first respondent shall be at liberty to withdraw the same from the trial court by filing application in this regard before the trial Court.

Dated, Thursday, the 29th day of October, 2015.

Sd/-B. SUDHEENDRA KUMAR, JUDGE.

Ari/30/10/

/truecopy/

P.S. To Judge