

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

Crl.Rev.Pet.No. 3925 of 2008

CRA 138/2008 of ADDLSESSIONS COURT (ADHOC)-II, ALAPPUZHA
CC 40/2008 of J.M.F.C.-II,ALAPPUZHA

REVISION PETITIONER:

K.AJITHKUMAR, KULATHUVILA VEEDU
THATTARKONAM PO., KOLLAM.

BY ADV. SRI.C.A.RAJEEV

RESPONDENTS:

1. SREE GOKULAM CHITS AND FINANCE CO.PVT.
LTD., REP. BY ITS P/AT.HOLDER T.R.KRISHNAN KUNJU
S/O.P.R.THYAGARAJA PANICKER, WORKING AS LEGAL
ASSISTANT, KOLLAM DIVISION, COMMERCIAL SHOPPING
COMPLEX , BISHOP JEROME NAGAR, CHINNAKADA
KOLLAM.

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

R1 BY ADV. SRI.K.N.VENUGOPALA PANICKER
R2 BY SRI.JUSTIN JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
01-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.3925 of 2008

Dated this the 1st day of September 2015

O R D E R

The revision petitioner is the accused in C.C. No.40 of 2008 on the files of the Court of the Judicial First Class Magistrate Court-II, Alappuzha. The trial court convicted the revision petitioner under Section 138 of Negotiable Instruments Act (for short 'the N.I. Act') and sentenced him to undergo simple imprisonment for three months and to pay a compensation of Rs.1,94,000/- to the complainant under Section 357(3) Cr.P.C. Against the said conviction

and sentence, the revision petitioner filed an appeal before the Sessions Court, Alappuzha. The Additional Sessions Court, Alappuzha as per judgment dated 19.8.2008 in Crl.Appeal No.138 of 2008 dismissed the appeal filed by the revision petitioner. Aggrieved by the said conviction and sentence, the appellant therein filed this Crl.R.P.

2. The allegation against the revision petitioner can be briefly stated thus: The revision petitioner was a guarantor for disbursement of the chit amount to the subscriber, namely, Asok Kumar. The subscriber made default in payment of instalments of the chit amount. In the said circumstances, the revision petitioner issued Ext.P1 cheque in favour of the complainant towards the discharge of the liability of the subscriber. The complainant presented the

said cheque for encashment. However, the same was dishonoured due to insufficiency of the 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, the revision petitioner did not pay the cheque amount within the statutory period or thereafter.

3. Before the trial court, the legal clerk of the complainant company was examined as PW1 and Exts.P1 to 7 were marked for the complainant. Ext.D1 chit passbook was marked for the defence. After evaluating the relevant inputs, the trial court found the revision petitioner guilty under Section 138 of the N.I. Act. The appellate court also confirmed the same.

4. This Court will not ordinarily interfere with the concurrent finding of facts by the courts below. However, if the finding is found to be incorrect or perverse, it is the duty of this Court to interfere with the same. In this case, the evidence relied on by the courts below was the evidence of PW1, who was the legal clerk of the complainant company. Admittedly, PW1 did not have any direct knowledge with regard to the transaction involved in this case. The revision petitioner had a consistent case that the amount covered by Ext.P1 cheque was not due to the complainant from the revision petitioner and that a signed blank cheque entrusted by the revision petitioner with the complainant at the time of disbursing the chit amount had been misutilised by the

complainant to file the present complaint. PW1, during his cross-examination stated that he was not aware about the amount paid by the subscriber to the chitty. Ext.D1 is the pass book issued by the complainant to the subscriber. PW1 admitted that Ext.D1 pass book was issued by the complainant to the subscriber. As per Ext.D1 pass book, an amount of Rs.1,61,250/- was already paid by the subscriber to the chitty, which had been admitted by PW1. The total chit amount is Rs.3,00,000/-. If the revision petitioner had already deposited an amount of Rs.1,61,250/-, it is not discernible as to how the amount covered by Ext.P1 cheque was due to the complainant from the revision petitioner. The amount covered by Ext.P1 cheque is

Rs.1,94,754/-. The evidence of PW1 is silent with regard to the same. Even though the revision petitioner had a specific contention that the amount covered by Ext.P1 cheque was not due to the complainant from the revision petitioner, no step had been taken by the complainant to produce the documents pertaining to the transaction involved in this case. No document is available before the court to show that the amount covered by Ext.P1 cheque was due to the complainant from the revision petitioner as on the date of issuance of Ext.P1 cheque. Having gone through the evidence of PW1, I am of the view that the evidence of PW1 is not at all sufficient to hold that the amount covered by Ext.P1 cheque was due to the complainant from the revision petitioner, as on the

date of issuance of Ext.P1 cheque. If that be so, the contention of the revision petitioner appears to be more probable. Consequently, the finding of the courts below that the revision petitioner had executed Ext.P1 cheque as stated by PW1, cannot be accepted. There is no other material before the court to support the evidence of PW1. Having meticulously gone through the evidence of PW1, I am satisfied that the finding of the courts below that the revision petitioner had committed offence under Section 138 of the N.I. Act cannot be said to be legal, proper and correct and consequently, the verdict of guilty, conviction and sentence passed by the trial court under Section 138 of the N.I. Act are liable to be set aside and I do so.

In the result, this Crl.R.P. stands allowed and the

conviction and sentence passed against the revision petitioner by the courts below under Section 138 of the N.I. Act are set aside and the revision petitioner is acquitted for the offence under Section 138 of the N.I. Act. Bail bond of the revision petitioner stands cancelled and the revision petitioner is set at liberty.

Sd//

**B.SUDHEENDRA KUMAR,
JUDGE.**

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/ True copy /

PA to Judge