2025:KER:31165

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

CRL.REV.PET NO. 414 OF 2025

AGAINST THE JUDGMENT DATED 14.01.2025 IN Crl.A NO.91 OF 2021 OF ADDITIONAL SESSIONS COURT - I, KASARAGOD ARISING OUT OF THE JUDGMENT DATED 15.11.2021 IN CC NO.44 OF 2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS -III, HOSDURG

REVISION PETITIONER/APPELLANT/ACCUSED:

C. RAGHU
AGED 41 YEARS, S/O C.NARYANAN,
DEEPU NIVAS, PUTHRIYADDUKKM P.O,
PEROLE VILLAGE, HOSDURG TALUK,
KASARGOD DISTRICT, PIN - 671314

BY ADVS.
A.ARUNKUMAR
S.SHYAM KUMAR
SACHIN GEORGE ARAMBAN
NESILI NAZEER

RESPONDENTS/RESPONDENTS/
RESPONDENTS/STATE & COMPLAINANT:

1 **STATE OF KERALA**
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

2 **GIREESH M.V**
AGED 47 YEARS,
S/O LATE KUNHIRAMAN,
KARUVACHERY, NILESHWAR. P.O,
NILESHWAR VILLAGE, HOSDURG TALUK,

KASARGOD DISTRICT –, PIN - 671314

SRI.M.P. PRASANTH, PP

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 10.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O R D E R

This revision petition has been filed challenging the concurrent finding of conviction and sentence in a proceedings under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I.Act').

2. The respondent No.2 filed a private complaint as C.C.No.44 of 2021 against the petitioner under Section 142 of the N.I.Act before the Judicial First Class Magistrate Court-III, Hosdurg (for short, 'the trial court'). The case of the respondent No.2 is that the petitioner borrowed a sum of Rs.2,00,000/- from him and towards the discharge of the said debt, Ext.P1 cheque was issued, which on presentation was dishonoured for want of sufficient funds. Even though statutory notice under Section 138(b) of the N.I. Act was issued and received by the petitioner, there was no compliance. Hence, the prosecution was launched.

3. After trial, the trial court found the petitioner guilty

under Section 138 of the N.I.Act and he was convicted for the said offence. He was sentenced to undergo simple imprisonment till rising of the court and to pay an amount of Rs.2,00,000/- as compensation, in default, to suffer simple imprisonment for a period of one month. The petitioner challenged the conviction and sentence of the trial court before the Additional Sessions Court-I, Kasaragod (for short, 'the appellate court') in Crl.Appeal No. 91 of 2021. The appellate court dismissed the appeal. This revision petition has been filed challenging the judgments of the trial court as well as the appellate court.

4. I have heard Sri.A.Arunkumar, the learned counsel for the petitioner and Sri.M.P.Prasanth, the learned Public Prosecutor.

5. To prove the case of the respondent No.2, he himself gave evidence as PW1. Even though PW1 was cross-examined in length, nothing tangible could be extracted to discredit his

testimony. The respondent No.2 has succeeded in proving the transaction, execution and issuance of the cheque. The petitioner admitted his signature in Ext.P1 cheque. His case is that the cheque in question was given to one Kunhiraman and it was misused. But no evidence has been adduced to substantiate the said contention. No rebuttal evidence has been adduced by the petitioner to rebut the presumption available to the respondent No.2 under Sections 118 and 139 of the N.I.Act. Hence, I find no reason to interfere with the impugned judgments.

Accordingly, this revision petition is dismissed. However, the petitioner is granted three months' time to appear before the trial court to receive the sentence till the rising of the court and to deposit the compensation amount.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

APA