

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

Cr1.Rev.Pet.No. 892 of 2003 (C)

CRL.A 149/2001 of II ADDL. SESSIONS COURT, PALAKKAD
DATED 10-01-2003

CC 435/1998 of J.M.F.C.-II, PALAKKAD DATED 28-03-2001

REVISION PETITIONER(S)/APPELLANT/ACCUSED :

MANOJ.P., S/o.BALAKRISHNAN NAIR,
AGED 31 YEARS, PALAR VEEDU, PATHIRIPALA,
PALAKKAD DISTRICT.

BY ADVS.SRI.M.H.HANIL KUMAR
SRI.TOM K.THOMAS

RESPONDENT(S)/RESPONDENT & STATE/COMPLAINANT & STATE:

1. SMT.A.K.PREMA LATHA, AYURVEDIC MEDICAL
PRACTITIONER, CHITHIRA, KADAMPAZHIPPURAM,
AZHIYANNUR, OTTAPALAM TALUK.
2. STATE OF KERALA, REP. BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1 BY ADV. SMT.C.V.BINDU
R2 BY PUBLIC PROSECUTOR SRI.JIBU.P.THOMAS.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 03-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No.892 of 2003

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Dated this the 3rd day of June, 2015

ORDER

The revision petitioner is the accused in C.C.No.435/1998 on the files of the Judicial First Class Magistrate's Court-II, Palakkad as well as the appellant in Crl.Appeal No.149/2001 on the files of the II Additional Sessions Court, Palakkad. He was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the N.I.Act') on a complaint filed by the 1st respondent herein. After trial, the learned Magistrate found the revision petitioner guilty of the said offence and convicted thereunder. He was sentenced to undergo simple imprisonment for a period of one month and also to pay a ₹45,000/- as compensation within a period of one month from the date of order. Feeling aggrieved, though he had preferred the above Criminal Appeal, the

Appellate Court also concurred with the concurrent findings of conviction and sentence as such and dismissed the appeal without any interference. The legality and propriety of the concurrent findings of conviction and sentence are under challenge in this revision petition.

2. The complainant's case is that in connection with the purchase of a Maruthi Van from him, the accused owed an amount of ₹30,000/- and in discharge of that liability, he had drawn and issued Ext.P2 cheque in favour of the complainant. But, when he presented the cheque for encashment, the same was dishonoured for want of sufficient funds.

3. Going by the impugned order , it is seen that the petitioner has raised three contentions in defence which were got rejected by the courts below concurrently. Firstly, it was contended that, pen with two different types of inks are used to fill up the cheque. So, it would probabalise his case that blank signed cheque was issued as a security.

This question was considered by this Court in **Lillikutty v. Lawrance** (2003 (3) KLT 721) and held that mere fact that payees name and amount shown in the cheque are not in the handwriting of the drawer, does not invalidate the cheque. No law which provides that entire body of the cheque has to be written by the drawer only in his own handwriting. What is mentioned is, signature of the drawer only and not the body of the instrument. In view of the above decision, the courts below can be justified in rejecting the said contention.

4. Secondly, it is contended that Ext.P2 cheque was presented for encashment earlier which got dishonoured and notice was issued pursuantly. Thereafter, no proceedings were instituted for prosecuting the accused under Section 138 of the Act. Thereafter, Ext.P2 cheque was presented again and got dishonoured for want of sufficient funds and again issued the present notice requiring the accused to pay the cheque amount. Thus, two

notices had been issued and cause of action can be arisen at the first instance only. But, going by the impugned judgment, it could be seen that though he has raised such a contention, the first notice has not been produced to substantiate the said contention. In the absence of any evidence to prove that the complainant had earlier issued notice to the accused, this contention cannot be accepted and the courts below are justified in rejecting the said contention.

5. Thirdly, it was contended that the blank signed cheque was issued as security. In **ICDS Ltd v. Beena Shabeer** (2002 (3) KLT 218), the Apex Court held that the cheque drawn and issued as a security also will fall under the mischief of the offence under Section 138 of the Act. More importantly, no evidence had been adduced to show that Ext.P2 cheque had been issued as a security cheque and thereby, the accused failed to rebut the presumption under Section 139 and 118(a) of the Act. There is no

illegality or impropriety in the impugned judgment under challenge. Hence, conviction under Section 138 of the Act will stand confirmed.

6. Coming to the sentence, it is seen that sentence imposed on the revision petitioner is disproportionate with the nature and gravity of the offence contemplated under Section 138 of the N.I.Act.

7. The Supreme Court, in the decision in **Kaushalya Devi Massand v. Roopkishore** (AIR 2011 SC 2566), held that the offence under Section 138 of the N.I. Act is almost in the nature of civil wrong which has been given criminal overtone, and imposition of fine payable as compensation is sufficient to meet the ends of justice. Further, in **Vijayan vs. Baby** (2011(4) KLT 355), Supreme Court held that the direction to pay the compensation by way of restitution in regard to the loss on account of the dishonour of the cheque should be practical and realistic. So, in a prosecution under Section 138 of the N.I. Act, the compensatory aspect of

remedy should be given much priority over punitive aspect.

8. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, expressing willingness to pay the compensation, I am inclined to grant 'three' months time to pay the compensation. Similarly, the substantive sentence of imprisonment for one month is reduced and modified to simple imprisonment for one day till rising of the court. Consequently, this Revision Petition will stand disposed of subject to the following terms.

i. The Revision Petitioner shall undergo simple imprisonment for one day till rising of the court.

ii. The Revision Petitioner shall pay a compensation of Rs.45,000/- (Rupees Forty Five thousand only) to the 1st respondent within a period of 'three' months from today. If the petitioner had deposited any amount in the trial court in compliance with the interim order of this Court, the said amount shall be given credit to and the balance alone need

be paid as compensation. In that event, the complainant is allowed to withdraw such deposit.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 3rd September, 2015 with sufficient proof to show payment of compensation .

iv. In default, the Revision Petitioner shall undergo simple imprisonment for a period of one month.

The Criminal Revision Petition is disposed of accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.Ato Judge