

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

Crl.Rev.Pet.No. 1560 of 2003 ()

Crl.A 325/2002 & Crl.R.P.No.92/2002 of SESSIONS COURT, THRISSUR

STC 954/2000 of J.M.F.C.,WADAKKANCHERY

REVISION PETITIONER/APPELLANT/ACCUSED :

P.BALAKRISHNAN, S/o.NARAYANA MENON,
RESIDING AT NEAR KARTHIAYANI TEMPLE,
AYYANTHOLE, THRISSUR.

BY ADVS.SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE :

1. SREEKUMAR, S/o.DEVAKI AMMA, KAIPPILLY HOUSE,
RESIDING AT KUZHUPULLY VEETIL, WADAKKANCHERY
VILLAGE, TALAPPILLY TALUK.
2. STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.P.V.CHANDRA MOHAN
R2 BY PUBLIC PROSECUTOR SRI.JIBU.P.THOMAS.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 18-06-2015, ALONG WITH CRRP. 1563/2003, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.Nos. 1560 & 1563 of 2003

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Dated this the 18th day of June, 2015

ORDER

These revision petitions are filed against a common judgment passed in Criminal Appeal No.325/2002 and Crl.R.P.No.92/2002 on the files of the Sessions Court, Thrissur. Criminal Appeal No.325/2002 was filed by the accused, who was convicted and sentenced to undergo simple imprisonment for three months only for the offences punishable under Section 138 of the N.I.Act in S.T.No.954/2000 on the files of the Judicial First Class Magistrate's Court, Wadakkancherry. No amount was given as compensation. Crl.R.P.No.92/2002 was filed by the complainant in S.T.No.954/2000, seeking compensation.

2. The case of the complainant is that the accused had received ₹2.5 lakhs from the complainant to secure a job for the daughter of the complainant in the

Manikkamangalam Higher Secondary School managed by the N.S.S. As the accused failed to secure the job, the amount was demanded and in discharge of the said liability, the accused issued DD for ₹1.25 lakhs drawn on the Dhanalakshmi Bank and towards the balance of ₹1.25 lakhs, cheque dated 23.10.1999 was issued in favour of the complainant. Another cheque for ₹50,000/- dated 4.12.1999 was given for the financial loss and mental agony suffered by the complainant. When the cheques were presented for collection, the same was dishonoured and returned for want of sufficient funds.

3. In defence, the accused admitted the issuance of the cheques. The fact that he had received cash as security for employment is also not disputed. In Ext.P8 reply notice, the accused had stated that he had borrowed ₹2.5 lakhs for two months and while receiving the amount, two signed blank cheques and stamp papers were given and on 23.10.1999, ₹1.2 lakhs was given by way of DD and the

balance was given in cash. But, the blank cheques and the security documents were not returned by the complainant. But, when DWs.1 and 2 were examined from the defence side, the case of the accused was that blank cheques were given as security. As rightly held by the court below, the burden to prove that blank cheques were given as security is heavily on the accused; but the accused has not examined anybody to prove the said fact. So also, when the receipt of ₹2.5 lakhs is admitted, the burden is heavy on the accused to prove that he had paid ₹1.25 lakhs to the complainant and the complainant has not returned the blank signed cheques received from him. Absolutely, no evidence has been adduced to prove the payment of ₹1.25 lakhs as well as the issuance of the cheques as a security. In the absence of rebuttal evidence, the court below is justified in finding that the revision petitioner has miserably failed to rebut the presumption under Section 139 and 118 (a) of the N.I.Act, which stood in favour of the petitioner.

4. The learned counsel for the Revision Petitioner reiterated the contentions which were raised before the courts below and got rejected concurrently. The learned counsel urged for a re-appreciation of evidence once again, which is not permissible under the revisional jurisdiction unless any kind of perversity is found in the appreciation of evidence. The Revision Petitioner failed to point out any kind of perversity in the appreciation of evidence or illegality or impropriety in the findings whereby the trial court convicted him.

5. The courts below had concurrently found that the complainant/1st respondent had successfully discharged initial burden of proving execution and issuance of the cheques; whereas the Revision Petitioner had failed to rebut the presumption under Section 118(a) and 139 of the N.I. Act which stood in favour of the 1st respondent. So also, it is found that the debt due to the 1st respondent was a legally enforceable debt and Exts.P1 and P2 cheques were

duly executed and issued in discharge of the said debt.

6. This Court is satisfied that the courts below had meticulously evaluated the evidence on record. I do not find any kind of illegality or impropriety in the said findings or perversity in appreciation of evidence, from which the above findings had been arrived. Therefore, I am not inclined to re-appreciate entire evidence once again and I confirm the concurrent findings of conviction.

7. At last, the learned counsel for the Revision Petitioner submits that the sentence imposed on the Revision Petitioner is disproportionate with the gravity and nature of the offence contemplated under Section 138 of the N.I. Act. The learned counsel further sought for sometime to pay the compensation as he is unable to raise the said amount forthwith due to paucity of funds, in case this revision is dismissed.

8. 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.

9. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, the substantive sentence of simple imprisonment for three months will stand set aside and the petitioner is given three months time to pay the fine. Consequently, in supersession of the sentence imposed by the courts below, the Revision Petitioner will stand sentenced as follows:

i. The Revision Petitioner shall pay a fine of Rs.2,25,000/- (Rupees Two Lakhs Twenty Five Thousand only) within a period of three months from today and the same shall be given as compensation to the legal heirs of the 1st respondent/complainant.

ii. In default, the Revision Petitioner shall undergo simple imprisonment for a period of two months.

These Criminal Revision Petitions are disposed of accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge