

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

Crl.Rev.Pet.No. 21 of 2002  
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AGAINST THE JUDGMENT IN CRL.A.NO. 444/1999 of SESSIONS  
COURT, KOZHIKODE.

AGAINST THE JUDGMENT IN CC 12/1997 of J.M.F.C., VADAKARA.

REVISION PETITIONER(S)/APPELLANT/ACCUSED:  
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P.P.BHASKARAN, S/O.KANARAN,  
PARAMBATH HOUSE, CHORODE AMSOM, ERAPURAM DESOM,  
VADAKARA TALUK.

BY ADV. SRI.SUNNY MATHEW

RESPONDENT(S)/RESPONDENTS/COMPLAINAT AND STATE:  
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1. M.SATHEESAN, S/O.KUNHAPPAKURUP,  
MATHUR HOUSE, P.O.CHORODE, VADAKARA TALUK.

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

R2 BY PUBLIC PROSECUTOR SRI. N. SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN  
FINALLY HEARD ON 20-05-2015, THE COURT ON THE SAME DAY  
PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.142 OF 2002 IN CRL.R.P. NO.21 OF  
2002:

DISMISSED

20/5/2015

SD/- K. HARILAL, JUDGE.

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P.S. to Judge

**K. HARILAL, J.**

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**Crl.R.P. No.21 of 2002-C**  
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**Dated this the 20<sup>th</sup> day of May, 2015**

**ORDER**

This Revision Petition is filed challenging the concurrent findings of conviction entered and the sentence imposed on the Revision Petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act') in Criminal Appeal No.444 of 1999 on the files of the Sessions Judge, Kozhikode Division. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.12 of 1997 on the files of the Judicial First Class Magistrate's Court, Vadakara. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for three

months.

2. The complainant's case is that the accused borrowed ₹25,000/- on 6/6/1996 and on the same day, Ext.P1 cheque post dated as 8/10/1996 was drawn and issued in favour of the complainant in discharge of the loan amount; whereas it is the case of the accused that Ext.P1 cheque was issued only as security and not in discharge of a loan. It is pertinent to note that the case of the complainant is that the loan was granted on 6/6/1996 and the accused had agreed to return the amount within a period of four months and it was, accordingly, Ext.P1 cheque was post dated as 8/10/1996 was handed over by the accused to the complainant in the discharge of the said loan. I do not see any kind of abnormality in issuing the post dated cheque when there is an agreement to pay back the money borrowed after four months only. Moreover, the legal position is settled by the Apex Court is that the cheque issued as security would fall under the offence punishable under Sec.138 of the N.I.

Act [I.C.D.S. Ltd., v. Beena Shabeer - 2002 (3) KLT 218 (SC)] and Mohanachandran Nair v. P.C. Cheriyan and another (2012 (4) KHC 96). After analysing the deposition of the accused in answer to the questions under Sec.313 of the Cr.P.,C. and the question put to the complainant during cross-examination of the complainant, the court below found that the accused had no consistent case and the defence put forward by the accused is untrustworthy and unbelievable. Though he contended that Ext.P1 cheque was issued to one Bhaskaran when the complainant was cross-examined, the learned counsel for the accused put a suggestion that the said cheque was issued to the complainant on account of a chitty transaction. Thus, the court below can be justified in rejecting the defence contentions raised by the accused.

3. 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.

4. The courts below had concurrently found that the complainant/1<sup>st</sup> respondent had successfully discharged initial burden of proving execution and issuance of the cheque; 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 1<sup>st</sup> respondent. So also, it is found that the debt due to the 1<sup>st</sup> respondent was a legally enforceable debt and Ext.P1 cheque was duly executed and issued in discharge of the said debt.

5. 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 Sec.138 of the N.I. Act. The learned counsel further sought for some time to pay the compensation as he is unable to raise the said amount forthwith due to paucity of funds.

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)

CLT 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, expressing willingness to pay the compensation, I am inclined to grant three months time to pay the compensation. In supersession of the sentence imposed by the trial court and confirmed by the appellate court, the accused will stand sentenced as follows:

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

ii. The Revision Petitioner shall pay ₹25,000/- (Rupees Twenty five thousand only) to the 1<sup>st</sup> respondent as compensation

within a period of three months from today.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 20/8/2015 with sufficient proof to show payment of compensation.

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

The Criminal Revision Petition is disposed of accordingly.

**Sd/-**

**(K. HARILAL, JUDGE)**

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P.S. to Judge

**K. HARILAL, J.**

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**Crl.R.P. No.21 of 2002-C**  
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**Dated this the 20<sup>th</sup> day of May, 2015**

**ORDER**