

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

Crl.Rev.Pet.No. 532 of 2004 (B)

AGAINST THE JUDGMENT IN CRL.A 219/2003 of ADDL.SESIONS
COURT,KOTTAYAM DATED 05-12-2003

AGAINST THE JUDGMENT IN CC 955/2001 of J.M.F.C - II (MOBILE) ,
KOTTAYAM DATED 24-04-2003

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

C.MOHAN, AGED 50 YEARS,
S/O. LATE CHOKKALINGA PILLAI, PUTHUPPARAMBIL HOUSE,
VAZHAPPALLY, CHANGANACHERRY.

BY ADV. SRI.P.K.JOSE

RESPONDENT(S)/RESPONDENT NO.1/COMPLAINANT::

1. M.MOHANA KUMAR,
VADAKKE ILLAM VEEDU, ARUNODAYAM, PERUNNA P.O.
CHANGANACHERRY, KOTTAYAM DISTRICT.

2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

R1 BY ADV. SRI.SEBASTIAN THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 23-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Cr1.R.P. No.532 of 2004

Dated this the 23rd day of June, 2015.

O R D E R

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.219/2003 on the files of the court of the Additional Sessions Judge, Kottayam. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in C.C.No.955/2001 on the files of the Judicial First Class Magistrate's Court-II (Mobile), Kottayam. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for three months and to pay a compensation of Rs.21,000/- to the complainant under Section 357(3) of the Cr.P.C. and in default to

undergo simple imprisonment for three months.

2. The complainant's case is that the accused owed an amount of Rs.21,000/- to him and in discharge of the said liability, the accused drew a cheque in his favour for the said amount . When the cheque was presented for encashment, the same was dishonoured for want of sufficient funds. In defence, the accused contended that he had borrowed Rs.18,000/- only for his son and issued a cheque as security for payment of the said amount. Thus, the accused admitted the issuance of the cheque and the signature therein. No defence evidence was adduced by the accused. As rightly held by the court below, mere denial in a statement under Section 113 of the Cr.P.C. is not sufficient to rebut the presumption available to the complainant. In the above view, the trial court is justified in finding that the accused failed to rebut the presumption which stood in favour of the complainant. In Rangappa v. Mohan [2010 (2) KLT 682 (SC)], the Apex Court held that the presumption mandated under Section 139 of the N.I. Act includes the

existence of a legally enforceable debt or liability also. In appeal, though the accused contended that no opportunity had been given to him to adduce evidence, the appellate court has verified the records and found that in spite of granting several opportunities the accused stayed away from adducing evidence so as to rebut the presumption under Section 139 of the N.I. Act. there is no illegality or impropriety in the above findings and I do not find any perversity in the appreciation of evidence also.

3. Having regard to the nature and gravity of the offence, the revision petitioner is given two months time to pay the compensation. Similarly, the substantive sentence of imprisonment for three months is reduced and modified to simple imprisonment for one day till rising of the court. Consequently, this revision petitioner will stand sentenced as follows:

- i. The revision petitioner shall undergo simple imprisonment for one day till rising of the court.
- ii. He shall pay a compensation of Rs.21,000/-

(Rupees Twenty one thousand only) to the 1st respondent/complainant, within a period of two months from today, under Section 357(3) of the Cr.P.C.

- iii. He shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 22/8/2015 with sufficient proof to show payment of compensation.
- iv. In default, he shall undergo simple imprisonment for a period of two months.
- v. If he had deposited any amount in compliance with the interim order of this Court dated 19/2/2004, the said amount shall be given credit to and the balance alone needs to be paid as compensation and, in that event, the complainant is allowed to withdraw such deposit if any.

The Criminal revision petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.