

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

Crl.Rev.Pet.No. 2642 of 2003 ()

CRL.A. 609/2002 of II ADDL.SESIONS COURT,ERNAKULAM

CC 577/2000 of J.M.F.C.-I,KOCHI

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

KUMARAN, S/O.KOCHUKANDAN KORAN,
ANCHUTHALICKAL HOUSE,
EDAVANAKKAD VILLAGE, ERNAKULAM DISTRICT.

BY ADV. SRI.N.B.ANOOP

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. LALAN P.J., S/O. JACO ARACKAL,
ARACKAL HOUSE, NAYARAMBALAM VILLAGE,
ERNAKULAM DISTRICT.
2. STATE OF KERALA, REP: BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI.JIBU P. THOMAS.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 09-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Crl.R.P. No.2642 of 2003

Dated this the 9th day of June, 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.609/2002 on the files of the court of the II Additional Sessions Judge, Ernakulam. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in C.C.No.577/2000 on the files of the Judicial First Class Magistrate's Court-I, Kochi. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for three months and to pay to the complainant Rs.65,000/- as compensation under Section 357(3) of the Cr.P.C.

2. The learned counsel for the revision

petitioner raised two contentions. According to him, the court below has not considered Ext.D1 whereby the petitioner discharged the liability to the extent of Rs.15,000/-. Going by the impugned judgment, it is seen that the learned Magistrate compared the signatures of the complainant in Ext.D1 and in the vakalath of the complainant and arrived at a finding that both signatures are not similar. Therefore, the said contention will stand rejected. It is the specific case of the complainant that the cheque was issued in discharge of a legally enforceable debt. But the accused contended that the complainant is a subscriber to a chitty conducted by a Trust of which the accused is the Manager and, in discharge of the amount due under the chitty, the accused was coerced and compelled to issue a blank signed cheque to the complainant. But, apart from the mere suggestion, there is no evidence to prove the said contention at least with the yardstick of preponderance of probability. In this analysis, the court below can be justified in finding that the accused miserably failed to rebut the presumption under Section

138 of the N.I. Act.

3. The learned counsel for the revision petitioner submits that the substantive sentence of imprisonment imposed on the revision petitioner is disproportionate with the nature and gravity of the offence under Section 138 of the N.I. Act and he urged for reducing the substantive sentence.

4. 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 v. 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.

5. In view of the decisions referred above, I find

that the substantive sentence imposed on the revision petitioner is harsh and excessive and liable to be interfered. Consequently, the revision petitioner is sentenced to pay fine only and three months time is given to pay the fine.

6. In the result, in supersession of the sentence imposed by the trial court and modified by the appellate court, the revision petitioner will stand sentenced as follows:

The revision petitioner is sentenced to pay a fine of Rs.65,000/- (Rupees Sixty five thousand only) within a period of three months from today and, if paid or realised, the same shall be given as compensation to the complainant under Section 357(1)(b) of the Cr.P.C. Needless to say, fine payable as compensation can be realised under Section 421(a) of the Cr.P.C.

The Criminal revision petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.