

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

Crl.Rev.Pet.No. 3158 of 2003

**AGAINST THE JUDGMENT IN Crl.A.No.455/2003 of ADDITIONAL SESSIONS JUDGE
(ADHOC), ERNAKULAM DATED 03-09-2003**

**AGAINST THE JUDGMENT IN CC No.114/1998 OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE (E.O.), ERNAKULAM DATED 25-04-2003**

REVISION PETITIONERS/APPELLANTS/ACCUSED :-

- 1. M/S.THOMSONS SPECIALITY PACKAGINGS &
EXPORTS (INDIA) LTD.,
P.T.JACOB ROAD, KOCHI-05,
REP. BY ITS MANAGING DIRECTOR,
N.T.JOSEPH.**
- 2. N.T.JOSEPH.,
MANAGING DIRECTOR OF M/S.THOMSONS
SPECIALITY PACKAGINGS & EXPORTS (INDIA) LTD.,
P.T.JACOB ROAD, KOCHI - 05.**

BY ADV. SRI.BABY JOSEPH

RESPONDENTS/RESPONDENTS/COMPLAINANT :-

- 1. REKHA PRAKASH,
PROPRIETRIX,
AGRO COMBINES KATESONS BUILDINGS,
M.G.ROAD, ERNAKULAM.**
- 2. STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.**

R1 BY ADV. SRI.KMV.PANDALAI

R2 BY SRI.JUSTINE JACOB, PUBLIC PROSECUTOR

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 10-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

K.HARILAL, J

Crl.R.P.No.3158 of 2003

Dated this the 10th 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.455/2003 on the files of the Additional Sessions Judge (Ad-hoc I), 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.114/1998 on the files of the Additional Chief Judicial Magistrate's Court (Economic Offences), Ernakulam. According to the impugned judgment, the second Revision Petitioner is sentenced to undergo simple imprisonment for six months and is directed to pay ₹2,50,000/- as fine. In default, to undergo simple imprisonment for four months. If the fine amount of

₹2,50,000/- is realised, the same shall be given to the complainant towards compensation under Section 357(1) Cr.P.C.

2. The complainant's case is that in the course of regular business between the complainant and the accused in discharge of the amount due to the complainant, the accused issued a cheque for ₹2,24,801.50/- dated 05.05.1995 in favour of the complainant and when the said cheque was presented for encashment, the same was dishonoured and returned for want of sufficient funds.

3. Per contra, the accused contended, in defence, that there were business transactions between the complainant and the accused and, in the course of that transaction, a signed blank cheque was issued as security towards the freight charges to be paid to the complainant and Ext.P1 is that cheque. It is also contended that the complainant had manipulated and converted the signed blank cheque to Ext.P1 cheque for an amount of ₹2,24,801.50. As rightly observed by the court below, even if Ext.P1 cheque, was given as security, in view of the decision laid down by the Apex Court in **ICDS**

Limited v. Beena Shabeer [2002(3) KLT 218], the same will also fall under the mischief of the offence under Section 138 of the Negotiable Instruments Act. In **Vijendra Singh v. Eicher Motors [2012(1) KLT Short Note 28]** the Court held that when a signed blank cheque is handed over, it means that the signatory has given an implied authority to fill up the blank cheque which he has parted with. Thus, even if the contentions raised by the accused, in defence, is taken at its face value, the said defence is also covered by the decision laid down by the Apex Court. The cross-examination of PW1 and the evidence of Dws.1 and 2 would go to show that Ext.P1 cheque was drawn on account maintained by the first accused company. This fact is further proved by Ext.P7, ledger extract. The admission of the accused in Ext.P6 reply notice to the effect that they used to give signed blank cheques to the complainant because of the relationship with the complainant. Further establishes the complainant's case. Thus, the complainant successfully discharged the initial burden of proving the execution and issuance of the cheque. But, the accused miserably failed to rebut the presumption under

Sections 139 and 118(a) of the Negotiable Instruments Act which stood in favour of the complainant.

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 cheque; whereas the Revision Petitioners 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 Ext.P1 cheque was duly executed and issued in discharge of the said liability.

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 at. Therefore, I am not inclined to re-appreciate the entire evidence once again and I confirm the concurrent findings of conviction.

7. At last, the learned counsel for the Revision Petitioners submits that the sentence imposed on the 2nd 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 some time to pay the compensation as he is unable to raise the said amount forthwith due to paucity of funds.

8. Similarly, the substantive sentence imposed on the 2nd revision petitioner is too harsh and excessive. The learned counsel for the revision petitioners prayed for setting aside the sentence of imprisonment also. If the 2nd revision petitioner is incarcerated for a period, as ordered by the courts below, the entire family will put in great hardship.

9. 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.

10. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, I am inclined to grant three months time to pay the compensation. Similarly, the substantive sentence of simple imprisonment is reduced and modified to simple imprisonment for one day till rising of the court. Consequently, in supersession of the sentence imposed by the trial court and modified by the Appellate Court, the

Revision Petitioner will stand convicted as given below;

i) The second accused/second revision petitioner shall undergo simple imprisonment for one day till rising of the court.

ii) He shall pay a fine of ₹2,50,000/-(Rupees two lakh fifty thousand only) within a period of three months from today and the same shall be given to the complainant as compensation under Section 357(1) of 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 10th September, 2015 with sufficient proof to show payment of compensation.

iv) In default, he 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.A. TO JUDGE