

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. 803 of 2002 ()

AGAINST THE ORDER/JUDGMENT IN CRA 187/1999 OF THE SESSIIONS COURT,
KOZHIKODE DATED 31.10.01

AGAINST THE ORDER/JUDGMENT IN CC 530/1997 of J.M.F.C.-II, THAMARASSERY
DATED 29.3.1999

REVISION PETITIONER/PETITIONER

K.NARAYANA BHATT,
S/O.VASUDEVA BHATT, 1/44322 WEST HILL P.O., CALICUT.

BY ADVS.SRI.P.S.SREEDHARAN PILLAI
SRI.P.GOPINATH
SRI.SURESH SUKUMAR
SRI.C.S.SUNIL
SRI.P.R.SREEJITH

RESPONDENT/RESPONDENTS:

1. MOHANAN, S/O.IMBICHIKUTTY,
MOTHIYIL HOUSE, VAZHYOOR AMSOM DESOM
MALAPPURAM DISTRICT.

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

R1 BY ADV. SRI.JACOB ABRAHAM
R1 BY ADV. SMT.KOCHUMOL KODUVATH
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:

K.HARILAL, J.

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Crl.R.P.No. 803 of 2002

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Dated this the 20th 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.187/1999 on the files of the I Additional 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.530/1997 on the files of the Judicial First Class Magistrate's Court-II, Thamarassery. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for six months and to pay an amount of ₹ 1,50,000/- to PW1 as compensation under Section 357(3) Cr.P.C.

2. According to the complainant/1st respondent, the accused borrowed an amount of ₹2,00,000/- from him on 27.5.1995 and subsequently, the accused borrowed ₹ 50,000/- more by agreeing to repay the entire amount on 30.4.1996. Thereafter, due to intervention of the mediators, the accused agreed to pay the amount on 20.6.1996, for which the accused issued 5 cheques each for ₹50,000/-. Exts.P1, P2 and P3 cheques dated 20.06.1996 were presented for payment on 20.6.1996. The same was dishonoured and returned for want of sufficient funds. 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.

3. Per contra, the case of the accused is that the cheques were forcibly obtained from him on 7.5.1996 at Mukkom. In Ext.P5, it is alleged that the complainant and his people on 7.5.1996 at Mukkom-Karassery Road wrongfully confined and threatened the accused and extorted from the accused the cheques mentioned in the notice and also an agreement. But in the statement under Section 313 Cr.P.C, the case of the accused was that he along with his Manager were confined in his tourist bus at Mukkom and his son was forced to bring the cheque book and that the complainant forcibly obtained 5 cheques and also a signed blank stamp paper worth ₹30 from the accused. After analysing the defence contentions raised in Ext.P5 reply notice and 313 statement, the court below observed that the accused has no consistent case with regard to the issuance of the cheques. It is pertinent to note that the accused has admitted Exts.P1, P2 and P3 cheques were issued from his account and signature shown in those cheques are his signatures. So, the burden is

heavy on the accused to show, how the cheques were happened to be in the possession of the complainant. But, the accused miserably failed to put forth a definite case as to the possession of the cheque at the hands of the complainant. In the above premises, the court below can be justified in finding that the accused miserably failed to rebut the presumption under Section 139 and 118(a) of the N.I. Act, which stood in favour of the complainant. I do not find any kind of perversity in the appreciation of evidence.

4. 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 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 to P3 cheques were 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.

6. 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 some time to pay the compensation as he is unable to raise the said amount forthwith due to paucity of funds.

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

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. Going by the modified sentence imposed by the court below, it is seen that the said sentence is disproportionate with the nature and gravity of the offence contemplated under Section 138 of the N.I. Act, in view of the decisions referred above. Consequently, in supersession of the sentence imposed by the trial court and modified by the appellate court, the revision petitioner 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 a compensation of Rs.1,50,000/- (Rupees One lakh Fifty thousand only) to the complainant/1st respondent within a period of two 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 20th July, 2015 with sufficient proof to show payment of compensation .

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

The Criminal Revision Petition is disposed of accordingly.

**K.HARILAL,
JUDGE.**

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P.Ato Judge