IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

Crl.Rev.Pet.No. 82 of 2007 (A)

AGAINST THE JUDGMENT IN CRA No.9/2006 ADDITIONAL SESSIONS COURT, FAST TRACK - II, ALAPPUZHA DATED 29-09-2006

AGAINST THE JUDGMENT IN CC No. 516/2003 OF JUDICIAL FIRST CLASS MAGISTRATE COURT - I, ALAPPUZHA DATED 09-12-2005

REVISION PETITIONER/APPELLANT/ACCUSED :

K.P.MADHU, S/O. KARUNAKARAN,
POTTELATH HOUSE, KANICHUKULANGARA,
ALAPPUZHA DISTRICT.

BY ADVS.SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN

RESPONDENT/RESPONDENT/COMPLAINANT :
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1. **M/S. AISHWARYA TRUST,**
   KANICHUKULANGARA,
   REPRESENTED BY ITS SECRETARY,
   D.RADHAKRISHNAN.

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

R1 BY ADVS. SRI.R.HARIKRISHNAN
SRI.SUDHEENDRAN. K.Y.
SRI.N.ASHOK KUMAR
R2 BY PUBLIC PROSECUTOR, SMT.MADHUBEN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

rkj

Crl.Rev.Pet.No. 82 of 2007 (A)

APPENDIX

PETITIONER(S)' ANEEXURES :-

ANNEXURE A1: **COPY OF THE ORDER OF THE COURT OF SESSIONS, ALAPPUZHA IN CRIMINAL M.P.NO.57 OF 2006 IN CRIMINAL APPEAL NO.9 OF 2006 DATED 07.01.2006.**

ANNEXURE A2: **COPY OF THE ACKNOWLEDGEMENT FOR RECEIPT OF MONEY DATED 07.03.2006.**

RESPONDENT(S)' ANNEXURES :- NIL

//TRUE COPY//

P.A. TO JUDGE

rkj

K. HARILAL, J

Crl.Rev.Pet.No. 82 of 2007

Dated this the 21st day of January, 2015

ORDER

The revision petitioner is the accused in C.C.No.516 of 2003 on the files of Judicial First Class Magistrate Court - I, Alappuzha as well as the appellant in Criminal Appeal No.9 of 2006 on the files of Additional Sessions Judge, Fast Track Court -II, Alappuzha. He was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act on a complaint filed by the 1st respondent herein. After a trial, the learned Magistrate has found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act and he was convicted accordingly. He was sentenced to undergo simple imprisonment for one day till the rising of the Court and to pay of ₹12,341/- as compensation to the complainant under Section 357(3) of the Criminal Procedure Code. Though he had preferred the above appeal, the appellate court also concurred with the findings of the trial court and dismissed the appeal. The legality and propriety of the concurrent findings of conviction and sentence imposed on the petitioner is under challenge in this revision petition.

2. It is the case of the first respondent that, when the petitioner had availed the loan from the first respondent Trust and in discharge of the said liability the revision petitioner had drawn and issued a cheque dated 18.02.2003 for an amount of ₹13,341/- in favour of the first respondent. When the cheque was presented for encashment, the same was dishonoured and returned for want of sufficient funds. Though he caused to issue a lawyer's notice demanding the cheque amount, the petitioner has not paid the cheque amount. Thus, he has committed the offence punishable under Section 138 of the Negotiable Instruments Act.

3. In defence, the revision petitioner contended that there was a loan transaction between the petitioner and the first respondent. But the same was during the period 1999–2000 and to discharge the liability in that transaction the petitioner had remitted ₹5,350/- to the

first respondent and a cheque was issued at that time for the remaining amount. It is also contended that, after the filing of the complaint he has also remitted ₹1,000/- towards the balance amount due to the first respondent Trust under that transaction. Thus Ext.P1 cheque lacks consideration and there is no legally enforceable debt.

4. To discharge the initial burden of proof as regards the execution and issuance of a cheque, the Secretary of the first respondent Trust was examined as PW1 and Ext. P1 to P8 were marked. Ext.D1 passbook alone was produced in evidence by the writ petitioner. The learned Magistrate has specifically observed that though the first respondent was examined in detail at length, but nothing was brought out to discredit his evidence as regards the execution and issuance of the cheque and thereby the complainant/first respondent has successfully discharged his initial burden of proof. So also the presumption under Sections 118 and 139 of the Negotiable Instruments Act will stand in favour of the first respondent. I do not find any reason to interfere with the

said finding that the first respondent has successfully discharged his initial burden of proof.

5. Coming to the rebutal evidence, the only evidence adduced by the revision petitioner is Ext.D1 passbook. Ext.D1 discloses that, during the period between 09.10.1999 to 06.01.2000 ₹4,350/- was remitted by the Revision Petitioner. It is pertinent to note that Ext.P1 cheque is dated 18.02.2003. Therefore, even if Ext.D1 passbook is taken at its face value, the same has no evidentiary value, while considering the dishonour of a cheque dated 18.02.2003 admittedly issued by the revision petitioner. It can be safely concluded that Ext.P1 cheque has no connection with prior transaction during the year 1999-2000. In short, the petitioner miserably failed to adduce evidence to rebut the presumption under Sections 118 and 139 of the Negotiable Instruments Act, which stood in favour of the first respondent.

6. In this revision petition, it is also contended that Ext.P1 cheque is not supported by consideration as the enforcibility of the debt is barred by limitation. Ext.D1

document produced by the accused would show that the loan transaction was pertaining to the period 09.10.1999 to 06.01.2000; but Ext.P1 cheque is dated 18.02.2003. Thus the cheque was issued after three years and by the time debt became barred by limitation. In short, it is the case of the revision petitioner in this revision petition that the cheque was issued in discharge of a time barred debt. The learned Counsel for the first respondent cited '***Ramakrishnan v. Parthasaradhy***' [2003(2) KLT 613] and submits that the cheque issued in discharge of a time barred debt also would come under the purview of an offence under Section 138 of the Negotiable Instruments Act, if the same is dishonoured for want of sufficient funds.

7. In view of the rival submissions, the only legal issue to be considered is whether a cheque issued in discharge of a time barred debt would come under the offence under Section 138 of the Negotiable Instruments Act. As rightly submitted by the learned counsel for the first respondent, the said issue had been considered by

the Division Bench of this Court in the above decision and held that when a cheque is issued in discharge of a time barred debt and if the same is dishonoured for want of sufficient funds, it would not be permissible for the accused to contend that the liability was not a legally enforceable liability. In short, a cheque issued in discharge of a time barred debt is also covered by the offence punishable under Section 138 of the Negotiable Instruments Act.

I do not find any illegality or impropriety in any of the findings; so also I do not find any perversity in the appreciation of evidence, from which those findings have been arrived at.

Thus, this Revision Petition is devoid of merits and dismissed accordingly.

Sd/-

K. HARILAL

JUDGE

rkj

//TRUE COPY//

P.A. TO JUDGE