

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

Crl.Rev.Pet.No. 115 of 2007 ()

**CRLA 609/2005 of ADDL. SESSIONS COURT (AD HOC)-I, KOTTAYAM
ST 1864/2003 of J.F.C.M. COURT, VAIKOM**

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

**RAJAPPAN,
CHIRAYILPARAMBIL HOUSE, POLASSERI KARA
NADUVILE VILLAGE, VAIKOM.**

BY ADV. SRI.RAJEEV VKURUP

RESPONDENT(S)/RESPONDENTS/COMPLAINANT::

**1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA.**

**2. JALJI VARGHESE, S/O. VARGHESE,
MUTHANGAPARAMBIL HOUSE, KOTHAVARA KARA
THALAYAZHAM VILLAGE, VAIKOM TALUK, KOTTAYAM.**

**R1 BY SR. GOVT.PLEADER SRI.SAIDALAVI K.K.
R2 BY ADV. SMT.A.SREEKALA**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06-03-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

OKB

K.HARILAL, J.

Cr1.R.P. No.115 of 2007

Dated this the 6th day of March, 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.609/2005 on the files of the court of Addl. Sessions Judge (Ad hoc)-I, Kottayam. The above appeal was filed challenging the judgment, finding that the revision petitioner is guilty of the said offence, passed in S.T.No.1864/2003 on the files of the Judicial First Class Magistrate's Court, Vaikom. According to the impugned judgment, the revision petitioner is sentenced to undergo simple imprisonment for one day till rising of the court and to pay to the complainant Rs.50,000/- as compensation under Section 357(3) of the Cr.P.C. and in default to undergo simple imprisonment for two months.

2. Though this revision petition is filed on various grounds assailing the concurrent findings, the learned counsel for the revision petitioner mainly focussed on the point that centers around the nature and legal effect of Ext.P1 cheque. The learned

counsel contended that going by Ext.P3 notice, it could be seen that Ext.P1 cheque was issued as a proof of the receipt of the amount from the complainant. It can never be treated as a security for the payment of money to the revision petitioner. Therefore, if it is not a security cheque and the facts involved in the instant case are not covered by the decision in **Mohanachandran Nair v. Cheriyan [2012 (4) KLT SN 35]**.

3. I have meticulously scrutinised the contents of Ext.P3 notice issued by the complainant. As submitted by the learned counsel for the revision petitioner, in Ext.P3, Ext.P1 cheque is referred to as a document issued by the revision petitioner, on receipt of the amount from the respondent. But it is to be borne in mind that the said document is a valid cheque having the legal effects and consequences contemplated under Section 6 of the N.I. Act and the dishonour of the said cheque for want of money would be followed by all the penal consequences provided under Section 138 of the N.I. Act. If the cheque had been issued by the petitioner himself, it could be reasonably presumed that he had drawn and issued the same with the knowledge that he would face all the consequences under Section 138 of the N.I. Act, in case it is dishonoured for want of sufficient funds. If the said cheque is dishonoured for want of sufficient funds, it cannot be treated as a mere document and it cannot be equated with a mere receipt

acknowledging the receipt of the amount. No doubt, in the issuance of a signed cheque, there is an implied assurance that in case he fails to pay back the amount, the complainant is at liberty to present the cheque for encashment. If that be so, Ext.P1 cheque would fall squarely under the offence punishable under Section 138 of the N.I. Act. In short, it can safely be held that Ext.P1 cheque was issued as a security cheque, in case the petitioner fails to repay the amount, though it is referred to as document in Ext.P3. Hence, I find that the issue involved in this case is covered by the above decision.

4. 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 courts below had concurrently found that the complainant/2nd 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 2nd respondent. So also, it is found that the debt due to the 2nd respondent was a legally enforceable debt and Ext.P1 cheque was duly executed and issued in discharge of the said debt. 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 entire evidence once again and I confirm the concurrent findings of conviction.

5. Lastly, 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. The revision petitioner is unable to raise the said amount forthwith due to paucity of funds. The learned counsel urged for an opportunity to pay the compensation in instalments.

6. 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.

7. Having regard to the nature and gravity of the offence, in

the light of the decisions quoted above and submission made at the Bar, the revision petitioner is given three months time to pay the compensation. Consequently, in modification of the sentence imposed by the Appellate Court, this revision petition is disposed of subject to the following terms:

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

ii. He shall pay a compensation of Rs.50,000/- (Rupees fifty thousand only) to the 2nd respondent/complainant within a period of three months from today.

iii. He shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 6.6.2015 with sufficient proof to show payment of compensation.

iv. In default, he shall undergo simple imprisonment for a period of two months.

This Criminal Revision Petition is disposed of accordingly.

Sd/-
(K.HARILAL, JUDGE)

okb.