IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

Crl.Rev.Pet.No. 449 of 2005 (A2)

AGAINST THE JUDGMENT IN CRL.A 320/2003 of ADDL. SESSIONS COURT,THODUPUZHA DATED 13-12-2004

AGAINST THE JUDGMENT IN CC 405/2001 of J.M.F.C., KATTAPPANA DATED 17-11-2003

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

V.K.BABU, VAKAVELIL, VRINDAVAN LODGE,
KATTAPPANA KARA, KATTAPPANA VILLAGE.

BY ADVS.SRI.C.K.VIDYASAGAR
SRI.P.CHANDY JOSEPH

RESPONDENT(S)/RESPONNDENTS/COMPLAINANT & STATE:
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1. WILSON GEORGE, MECHERIL HOUSE,
BOMBAY GARMENTS, KATTAPPANA KARA, KATTAPPANA VILLAGE.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-31.

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

OKB

K.HARILAL, J.

Crl.R.P. No.449 of 2005

Dated this the 25th day of June, 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.320/2003 on the files of the court of the Additional Sessions Judge, Thodupuzha. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in C.C.No.405/2001 on the files of the Judicial First Class Magistrate's Court, Kattappana. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for three months and to pay a compensation of Rs.2,85,000/- to the complainant and in default to undergo simple imprisonment for two months.

2. Complainant's case is that the accused borrowed an amount of Rs.3 lakhs from him and thereafter he had repaid a sum of Rs.30,000/- in cash and issued Ext.P1 cheque for the balance amount of Rs.2,70,000/-. Per contra, the accused contended, by way of suggestion to the complainant while he was in the witness box, that the accused had borrowed a sum of Rs.1,20,000/- from the complainant in the year 1997 and he had paid the said amount by 3 instalments. The last instalment was for Rs.30,000/- and the same is evidenced by Ext.D2 receipt issued by the complainant. After considering the said contention the court below found that it is true that Ext.D2 receipt will reveal the fact that a sum of Rs.30,000/- was paid by the accused to the complainant. It is pertinent to note that the complainant himself has admitted the said aspect in the complaint itself. According to him, the said payment was towards the borrowal of Rs.3 lakhs, not for Rs.1,20,000/- as contended by the accused. But

no evidence had been adduced to prove that he had borrowed a sum of Rs.1,20,000/- only. As rightly observed by the court below, if he had actually repaid the aforesaid amount by 3 instalments, he would have produced more documents to prove the same. Though the accused had produced Ext.D2 Diary, the court below rightly discarded the same as the Diary is a self-serving document only. The case of the complainant is that the accused had borrowed an amount of Rs.3 lakhs as evidenced by Ext.P7 promissory note executed by the accused. Therefore, there is no reason to disbelieve the evidence adduced by the complainant and the accused miserably failed to rebut the presumption under Sections 118(a) and 139 of the N.I. Act, which stood in favour of the complainant. It is also contended by the accused that when he received Rs.1,20,000/-, signed blank cheques were also issued to the complainant as security for the amount borrowed. I am of the opinion that by issuing signed blank cheques the accused had conveyed an implied authority to fill up the cheques and produce the same for encashment. In Bhaskaran Nair v. Abdul Kareem [2006 (4) KLT 48], this Court held that the defence that a signed blank cheque was handed over by an account holder is intrinsically suspicious one and must be appreciated with great care and caution. No account holder is expected to deal with a cheque in such a casual, careless, irresponsible and indifferent manner and such a defence is impossible.

3. At last, the revision petitioner sought for some time to pay the compensation, if this Court finds that the revision petition is not allowable.

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. Similarly, the substantive sentence of simple imprisonment for three months will stand reduced and modified to simple imprisonment for one day till rising of the court and the revision petitioner is given three months time to pay the compensation. Consequently, 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. He shall pay a compensation of Rs.2,85,000/- (Rupees Two lakhs and eighty thousand only) within a period of three months from today to the 1st respondent/complainant, under Section 357(3) of the 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 25/9/2015 with sufficient proof to show payment of compensation.

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

v. If the he had already deposited any amount towards compensation in the trial court in compliance with the order of this Court dated 28/2/2005, the said amount shall be given credit to and the balance alone needs to be paid as compensation. In that event, the complainant is allowed to realise such deposit, if any, from the trial court.

The Criminal revision petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.