

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. 160 of 2007 (D)

Crl.Appeal 158/2004 of ADDL.SESIONS COURT (ADHOC)-IV, TRIVANDRUM

ST 2594/2003 of J.M.F.C.IV (MOBILE),TVM.

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**SAJEEV RAVI, DEVELOPMENT OFFICER,
NATIONAL INSURANCE COMPANY LTD.
PATHANAMTHITTA BRANCH.**

BY ADV. SRI.D.KISHORE

RESPONDENT(S)/COMPLAINANT AND STATE:

- 1. R.V.SANAL KUMAR, PRATHIBHA,
KAVARADI ROAD, PETTAH, THIRUVANANTHAPURAM.**
- 2. STATE OF KERALA, REPRESENTED BY
ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.**

**R, BY ADV. PUBLIC PROSECUTOR SMT.RINNY STEPHEN CHAMAPARAMBIL
R,R1 BY ADV. SRI.SUBHASH CYRIAC**

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

K.HARILAL, J.

Crl.R.P. No.160 of 2007

Dated this the 6th day of March, 2015

ORDER

The revision petitioner is the accused in ST No.2594/2003 on the files of Judicial First Class Magistrate Court –IV, Thiruvananthapuram, as well as the appellant in Crl. Appeal No.158/2004. He was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act on a complaint filed by the first respondent herein.

2. It is the case of the complainant that the petitioner had borrowed an amount of Rs.2,60,000/- from him and discharged part of that liability. The petitioner had drawn and issued Exhibit P1 cheque for Rs.60,000/- dated 20.02.2003 drawn on the account maintained by him to the first respondent/complainant towards the balance amount due to the complainant. When the said 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 neither paid the cheque amount nor did he sent a reply denying the said liability. Thus, he has committed the offence punishable under Section 138 of the Negotiable Instruments Act.

3. In defence, the petitioner contended that Exhibit P1 cheque was not issued in discharge of a legally enforceable liability. To discharge the initial burden of proving execution and issuance of the cheque the complainant was examined as PW1 and Exhibit P1 to P5 were marked, but no evidence had been adduced by the petitioner. After considering the evidence on record, the learned Magistrate found the revision petitioner guilty of the offence under Section 138 of the Negotiable Instruments Act and convicted thereunder. He was sentenced to undergo simple imprisonment for three months and to pay Rs.60,000/- to the first respondent as compensation under Section 357(3) of Cr.P.C. and in default to undergo simple imprisonment for one month.

The petitioner was further directed to pay Rs.1,000/- to the first respondent as cost under Section 359 Cr.P.C. and in default to undergo simple imprisonment for 10 days also. In appeal, after re-appreciating the evidence on record the learned Sessions Judge also confirmed that the verdict of guilt, but modified the substantive sentence of simple imprisonment for one day till the rising of the Court and the rest of the sentence was sustained as such without any interference. The legality and propriety of the concurrent findings of conviction and modified sentence are under challenge in this revision petition.

4. The learned counsel for the Revision Petitioner advanced the arguments and pointed out that the Court below miserably failed to appreciate the facts and evidence in its correct perspective. The learned counsel urged that re-appreciating the entire evidence on record once again with considering the limited jurisdiction under Section 401 of the Code of Criminal Procedure. I am not inclined to re-appreciate the entire evidence on record in the absence of any kind of perversity in the appreciation

of evidence.

5. Going by the impugned judgment, it is seen that the first respondent has successfully discharged the initial burden of proving execution and issuance of cheque by examining himself as PW1 and production of Exhibit P1 to P6, whereas the petitioner miserably failed to rebut the presumption under Section 139 and 118(a) of the Negotiable Instruments Act which stood in favour of the first respondent.

6. In view of the above observation concurrently made by the courts below, I do not find any kind of perversity in the appreciation of evidence from which those findings have been arrived at. Therefore, the concurrent findings of conviction will stand confirmed.

7. Coming to the sentence, it is seen that the appellate court has modified the substantive sentence of simple imprisonment for three months to simple imprisonment for one day till rising of the court and sustained the rest of the sentence as such, without any interference. I do not find any kind of perversity in the

said finding and I find that the modified sentence imposed by the court below is proportionate with the nature and gravity of the offence.

8. The learned counsel for the petitioner urged for granting four months time to pay the compensation. Having regard to the nature and gravity of the offence, the petitioner is given three months time to pay the compensation, failing which the default sentence will come into operation. The petitioner shall appear before the trial court to suffer the substantive sentence of simple imprisonment for one day till rising of the court on or before the 6th June, 2015 with sufficient proof to show payment of compensation. In default, the default sentence will come in to operation.

This revision petition is disposed of as above.

Sd/-
K.HARILAL, JUDGE

lmp

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PA TO JUDGE