

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

Crl.Rev.Pet.No. 1027 of 2006

AGAINST THE JUDGMENT IN CRL.A.NO. 143/2003 of ADDL.
DISTRICT COURT (AD HOC-I, KALPETTA DATED 27-12-2005

AGAINST THE JUDGMENT IN CC 389/1998 of C.J.M., KALEPETTA

.
REVISION PETITIONER(S)/APPELLANT/ACCUSED:

T.R.LASER, S/O.RAJAPPAN,
T.R.BAKER, MEPPADI POST, MOOPAINAD.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS/COMPLAINANT AND STATE:

1. C.K.SASIDHARAN, VRINDAVAN ESTATE,
VADUCANCHAL POST, WAYANAD DISTRICT.

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

R2 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS
R1 BY ADV. SRI.PHILIP M.VARUGHESE

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 03-09-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.1027 of 2006

Dated this the 3rd day of September, 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.143 of 2003 on the files of the Additional Sessions Judge, (Ad-hoc)-I, Kalpetta. The above appeal was filed challenging the judgment whereby the Revision Petitioner was found guilty of the said offence, passed in C.C.No.389 of 1998 on the files of the Judicial First Class Magistrate's Court, Kalpetta, Wayanad. According to the impugned judgment, the

Revision Petitioner stands sentenced to undergo simple imprisonment till rising of the court and to pay a fine of ₹1,25,000/-. In default, to undergo simple imprisonment for one month. On realisation of the fine amount, a sum of ₹1,20,000/- shall be paid to the complainant as compensation.

2. Heard the learned counsel for the revision petitioner Sri. Gracious Kuriakose and the learned counsel for the 1st respondent Sri. Philip M. Varghese.

3. The complainant's case is as follows: The accused borrowed an amount of ₹1,20,000/- from the complainant and in discharge of the said liability, he had drawn and issued Ext.P2 cheque for the said amount on 10/6/1998 to him and when he presented the said cheque for encashment, the same was dishonoured and returned for want of sufficient funds. Though he had issued a lawyer's notice demanding the cheque amount, the accused did not repay the cheque amount; but sent a reply notice

raising false and baseless contentions. To discharge the initial burden, the Power-of-Attorney Holder of the complainant was examined as P.W.1 and Exts.P1 to P9 were marked. On an appraisal of the aforesaid evidence, the courts below concurrently found that the complainant has successfully discharged the initial burden to prove, execution and issuance of the cheque and thereby the presumptions under Secs.139 and 118(a) of the N.I. Act would stand in favour of the complainant.

4. Coming to the rebuttal evidence, the case of the accused, in defence, was that he had borrowed an amount of ₹20,000/- from the complainant and at the time of the said borrowal, he had issued two blank signed cheques and also a signed stamp paper to the complainant. Thereafter, he paid ₹45,000/- to the complainant towards the liability of ₹20,000/-. But the complainant demanded ₹25,000/- more towards interest for which the accused was not amenable.

Thereafter, the complainant misused one of the two signed blank cheques and foisted a false case against the accused by way of prosecution under Sec.138 of the N.I. Act. He further contended that he gave a complaint before the Meppadi Police Station alleging the misuse of the cheque. In short, Ext.P2 cheque was not issued in discharge of the liability, according to the accused.

5. To prove the defence contentions, D.Ws.1 to 3 were examined and Exts.D1 to D5 were marked. D.W.1 was an employee working under the complainant as Collection Agent; but he denied the signature in Ext.D2 series and D3 and D4 alleged to have been put by him. Therefore, no purpose was served by examining D.W.1. D.W.2 is the accused himself. Ext.D1 is the receipt issued by the Meppadi Police Station to show the receipt of a complaint filed by the accused and Ext.D5 is the extract of register of petition. It is pertinent to note that Ext.P2 cheque

was dated 10/6/1998 and Ext.D1 complaint was dated 14/6/1998. It shows that the complaint was filed after the crucial date on which he had to make the amount available in his account to honour the cheque. The accused has no case that on 10/6/1998 the cheque amount was available in his account. Therefore, it could reasonably be presumed that the complaint dated 14/6/1998 was filed in anticipation to get over the prosecution that may be launched against him for the dishonour of the cheque. Consequently, no reliance can be placed on Ext.D1 or Ext.D4 to substantiate the defence contention.

6. The specific case of the accused was that he borrowed an amount of ₹20,000/- and paid back ₹45,000/-. Ext.D2 series of receipt shows the payment of ₹4,650/- only. Thus, the accused has miserably failed to substantiate his contention that he received ₹20,000/-; but paid back ₹45,000/-. Though he challenged the competency of P.W.1 who deposed on

behalf of the complainant that it has come out in evidence that he was present when the complainant advanced the loan amount of ₹1,20,000/- to the accused. It is true that in cross-examination, he admitted that he was not present when the accused drawn and issued Ext.P2 cheque to the complainant. But, his absence at the time of issuance of the cheque falls insignificant when the issuance of Ext.P2 cheque stands undisputed by the accused himself. Therefore, the court below is justified in relying on the evidence of P.W.1 as Power-of-Attorney Holder of the complainant. Thus, the accused has miserably failed to rebut the presumptions under the N.I. Act which stood in favour of the complainant. There is no illegality or impropriety and I do not find any perversity in the appreciation of evidence.

7. 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 Sec.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, if this revision petition is found liable to be dismissed.

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. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, I am inclined to grant three months time to pay the compensation. Consequently, this Revision Petition will stand disposed of subject to the following terms.

i. The Revision Petitioner shall undergo simple imprisonment for one day till rising of the court.

ii. The Revision Petitioner shall pay a fine of ₹1,25,000/- (Rupees One lakh and twenty five thousand only) within a period of three months from today and the same shall be given to the complainant/1st respondent as compensation under Sec.357(1)(b) of the Cr.P.C.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 3/12/2015 with sufficient proof to show payment of compensation.

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

v. If he had deposited any amount in the trial court towards compensation or fine, the same shall be given credit to and the balance alone needs to be paid as compensation or fine, as the case may be, and in that event, the complainant is allowed to realise such deposit from the court.

The Criminal Revision Petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge