

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. 234 of 2007 ()

CRL.Appeal No. 223/2005 of ADDL.SESIONS COURT (ADHOC)III, MANJERI

CC 88/2001 of J.M.F.C.,TIRUR

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

**K.P. VIJAYAKUMAR,
ARUNA DESIGN CENTRE, NEAR ROSE MEDICALS, TIRUR ROAD
VALANCHERRY.**

**BY ADV. SRI.P.VIJAYA BHANU
BY ADV. SRI.ALAN PAPALI**

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE::

**1. PRAKASH SAIT, S/O. LAKSHMANAN,
SILVER REPAIRING, CENTRAL BAZAAR, VALANCHERRY.**

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

**R,R1 BY ADV. SRI.T.K.SAIDALIKUTTY
R,R1 BY ADV. SRI.P.A.MOHAMMED ASHROF
R,R1 BY ADV. SRI.LAL K.JOSEPH
R,R1 BY ADV. SRI.A.A.ZIYAD RAHMAN
R,R1 BY ADV. SMT.SHEENA SAMUEL
R2 BY PUBLIC PROSECUTOR SMT.RINNY STEPHEN CHAMAPARAMBIL**

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.234 of 2007

Dated this the 6th day of March, 2015

ORDER

The Revision Petitioner is the accused in C.C No.88/2001 on the files of Judicial First Class Magistrate Court, Tirur, as well as the appellant in Criminal Appeal No,223/2005 on the files of the Additional Sessions Judge (Fast Track Court No.III, Adhoc) Manjeri. He was prosecuted for the offences punishable under Section 138 of the Negotiable Instruments Act on a complaint filed by the respondent herein. It is the case of the respondent that in discharge of a legally enforceable liability the petitioner/accused issued Exhibit P1 cheque for an amount of Rs.75,000/- to the respondent and when the said cheque was presented for encashment, the same was dishonoured and returned for want of sufficient funds. Though the respondent caused to issue a lawyer's notice demanding the cheque amount, the petitioner neither sent a reply denying the liability nor did he pay the cheque amount as demanded in the notice. Thus the

petitioner has committed an offence punishable under Section 138 of the Negotiable Instruments Act.

2. After considering the evidence on record the learned Magistrate have found the petitioner guilty of the offence under Section 138 of the Negotiable Instruments Act and convicted thereunder. He was sentenced to undergo a simple imprisonment for three months and to pay a compensation of Rs.75,000/- to the first respondent under Section 357 (3) of the Cr.P.C. and in default, to undergo simple imprisonment for two months. Though the petitioner had preferred above criminal appeal, the Appellate Court also after re-appreciating the evidence on record, confirmed the findings of conviction and sentence as such without any interference. The legality and propriety of the concurrent findings of conviction and sentence are under challenge in this revision petition.

3. Though this revision petition is filed on various grounds challenging the appreciation of evidence, the learned counsel for the petitioner mainly pointed out the contention that, the court below ought to have found that the issuance of Exhibit P1 cheque was implausible in

view of the evidence of PW2 coupled with Exhibit D1. Exhibit D1 is the passbook issued by bank and PW2 is the Manager of the bank. It is contended that Exhibit D1 would categorically go to show that the cheque No.36132 was encashed on 14.08.1995, the cheque No.36136 was encashed on 26.11.1996, cheque No.36137 was encashed on 26.11.1996, and cheque No.36138 was encashed on 29.11.1996. But the No. of Exhibit P1 cheque is 36133. The learned counsel for the petitioner contended that on a marshaling of serial Nos. of all the cheques in the order, it could have been presumed that Exhibit P1 cheque was one issued much earlier to all other cheques. Therefore there is no possibility to issue Exhibit P1 cheque on the day as alleged by the respondent in the complaint. It further goes to show that Exhibit P1 cheque was one issued as a blank signed cheque, much earlier to the alleged transaction and the same was misused subsequently for the prosecution of the petitioner/accused under Section 138 of the Negotiable Instruments Act. I am unable to appreciate the said argument in view of the specific case put forward by the

complainant, when he was cross examined. In cross examination, he had specifically deposed that the petitioner brought a filled cheque and signed it in his presence and handed over. There was no legal impediment in issuing an old cheque without keeping the order of the serial numbers. A payee would never take care of the order of the serial numbers of cheque leaves in the cheque book. That apart, drawer alone is aware of the serial numbers of each leaf in his cheque book. So payee cannot be found with fault for any disorder of the serial numbers of the cheque. PW2 categorically deposed that the cheque was dishonoured on the sole reason that there was no sufficient fund in the account. In the above view , I am inclined to reject the said contention based on the disorder of serial Nos. in the issuance of the cheque leaves.

4. At last the learned counsel for the petitioner confined his arguments to the proportionality of the sentence imposed on the petitioner. According to him, the sentence imposed on the petitioner is disproportionate with nature and gravity of the offences,

and it is excessive and harsh.

5. The Supreme Court, in the decision in **Kaushalya Devi Massand Vs. 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.

In view of the above decisions, I am of the opinion that the sentence imposed on the petitioner is a little excessive and liable to be interfered. In supersession of the sentence imposed by the Trial Court and confirmed by the Appellate Court, the petitioner will stand sentenced as follows:

- i. The petitioner shall undergo simple

imprisonment for one day till rising of the court.

ii.He shall pay a compensation of Rs.75,000/- to the complainant/1st respondent under Section 357 (3) of the Cr.P.C. within a period of four months from today.

iii. He shall appear before the Trial Court to suffer a substantive sentence of simple imprisonment for one day as ordered above on or before 7th July, 2015 with sufficient proof to show the payment of compensation.

iv. In default, the Revision Petitioner shall undergo simple imprisonment for two months.

Sd/-
K.HARILAL, JUDGE

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PA TO JUDGE

