

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. 250 of 2007 ()

**AGAINST THE ORDER/JUDGMENT IN CRA 550/2005 of ADDL. SESSIONS COURT-
I,MAVELIKKARA**

AGAINST THE ORDER/JUDGMENT IN CC 508/2004 of J.M.F.C., MAVELIKKARA

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**MOHANAN, ALINTE VADAKKATHIL,
PALICKAL EAST, THEKKEKKARA.**

**BY ADVS.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SMT.KAVITHA GANGADHARAN**

RESPONDENT(S)/STATE/COMPLAINANT:

**1. CHANDRAN, KANNALA VILAYIL VEEDU,
PALICKAL EAST, THEKKEKKARA, MAVELIKKARA.**

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

R1 BY ADV. SRI.N.SURESH

R2 BY PUBLIC PROSECUTOR SRI.RINNY STEPHEN CHAMPARAMBIL

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

STK

K.HARILAL, J.

Crl.R.P. No.250 of 2007

Dated this the 6th day of March, 2015

ORDER

The Revision Petitioner is the accused in C.C.No.508/2004 on the files of the Judicial First Class Magistrate Court, Mavelikkara, as well as the appellant in Crl. Appeal No.550/2005 on the files of the Additional Sessions Court - 1, Mavelikkara. He was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act on a complaint filed by the respondent herein.

2. The case of the complainant in the complaint was that the accused borrowed a sum of Rs.35,000/- on 5.12.2003 and in discharge of that liability he had issued Exhibit P1 post dated cheque with date 5.01.2004. When the complainant presented the said cheque for encashment the same was dishonoured for want of sufficient funds. In defence, the Revision Petitioner/accused contended that he had no transaction

with the complainant and the cheque was not issued in discharge of a legally enforceable liability, whereas Exhibit P1 cheque was one issued to the wife of the complainant in connection with a chitty transaction with her. Thus he has not committed the offence punishable under Section 138 of the Negotiable Instruments Act.

3. After considering the the evidence on record, the learned Magistrate 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 one year and to pay a fine of Rs.5,000/- and to pay Rs.40,000/- to the complainant under Section 357(3) Cr.P.C. and in default to undergo simple imprisonment for a period of six months. Though he had preferred above appeal challenging the conviction and sentence, after re-appreciating the evidence on record, the appellate court also confirmed the conviction but modified the sentence by reducing the substantive sentence to simple imprisonment for one day till the rising of the court and

also directing the petitioner to pay a compensation of Rs.40,000/- to the complainant under Section 357(3) of the Code of Criminal Procedure, and in default to undergo simple imprisonment for two more months. This revision petition is filed challenging the legality and propriety of the concurrent findings of conviction and modified sentence imposed by the appellate court.

4. The learned counsel for the petitioner advanced arguments challenging the concurrent findings of conviction. According to the learned counsel for the petitioner, the courts below miserably failed to appreciate the facts and evidence in its correct perspective. To rebut the presumption under Section 139 and 118(a) of the Negotiable Instruments Act, the accused was examined as DW1 and he deposed the chitty transaction with the wife of the complainant. But the court below has not considered the oral evidence of the accused in its correct perspective and went on by finding that the accused failed to rebut the presumption under Section 139 and 118(a) of the Negotiable Instruments Act.

5. In view of the above arguments, the short question that arises for consideration is whether the petitioner has succeeded in rebutting the presumption under Section 139 and 118(a) of the Negotiable Instruments Act, which stood in favour of the complainant. Going by the defence contention it could be seen that the accused contended that there was a chitty transaction with the wife of the complainant and Exhibit P1 cheque was issued as a security for the payment of chitty amount due to her and the said cheque was later misused for prosecuting him to release more amount from him. But going by the evidence on record it could be seen that except to the oral assertion of the witnesses no evidence has been adduced to substantiate the said contention. More importantly, in Exhibit D2 reply notice sent by him, he had not mentioned about the chitty transaction and the issuance of the cheque to the wife of the complainant as security, and had the said contention been a genuine one, certainly, he would have raised that contention in Exhibit D2 reply notice. In the absence of

such a contention in Exhibit D2 notice no reliance can be placed on his oral assertion alone without any other evidence. In the absence of any other evidence it can be safely concluded that the accused miserably failed to rebut the presumption under Section 139 and 118(a) of the Negotiable Instruments Act. There is no illegality or impropriety in the said findings of the courts below. Hence the concurrent findings of conviction will stand confirmed.

6. The learned counsel submitted that the sentence imposed on the Revision Petitioner is disproportionate with the nature and gravity of the offence and it is excessive and harsh also. I am unable to accept the said argument, in view of the modified sentence imposed by the appellate court by reducing the substantive sentence for one year to simple imprisonment for one day till the rising of the court. Further the learned counsel for the petitioner urged for permitting the accused to pay the compensation by installments. But I am not inclined to accept the said

contention also, but the petitioner is given three months time to pay the compensation. The petitioner shall appear before the trial court to suffer substantive sentence of simple imprisonment for one day till rising o f the court on or before 7th June, 2015 with sufficient proof to show payment of compensation. In default, the default sentence of two more months will come into operation.

Sd/-
K.HARILAL, JUDGE

lmp

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PA TO JUDGE

