

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

Crl.Rev.Pet.No. 272 of 2007

AGAINST THE JUDGMENT IN CRL.A.NO. 426/2003 of ADDL.
SESSIONS COURT (SPL. COURT), KOTTAYAM DATED 23-12-2006

AGAINST THE JUDGMENT IN CC 24/2003 of J.M.F.C.-II
(MOBILE), KOTTAYAM DATED 16-08-2003

REVISION PETITIONER(S) / (APPELLANT/ACCUSED) :

SHAJI C.VARKEY,
PROPRIETOR, MADATHIPARAMBIL RUBBER & AGENCIES,
NEAR NELLIMOOTTIL GUEST HOUSE, COLLECTORATE P.O.,
KOTTAYAM-686 002.

BY ADVS.SRI.T.M.ABDUL LATHEEF
SRI.A.MUHAMMED HASHIM

RESPONDENT(S) / (RESPONDENTS/COMPLAINANTS) :

1. M/S. UNITED BANKERS, K.K. ROAD,
KOTTAYAM, A REGISTERED PARTNERSHIP FIRM
REPRESENTED BY ITS PARTNER SRI.JOSEPH JOHN
RESIDING AT THEKKETHALACKAL BUNGLOW, PUTHENANGADY,
KOTTAYAM-686 001.

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

R1 BY ADV. SRI.GEORGE ZACHARIAH ERUTHICKEL
BY ADV. SRI.ALEX GEORGE
R2 BY PUBLIC PROSECUTOR SRI.JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 18-09-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.272 of 2007

Dated this the 18th 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.426/2003 on the files of the Additional Sessions Judge (Special), Kottayam. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.24/2003 on the files of the Judicial First Class Magistrate's Court-II, (Mobile) Kottayam. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple

imprisonment for one day till rising of the court and to pay ₹3,50,000/- as compensation to the complainant and in default, to undergo simple imprisonment for six months.

2. The complainant's case is as follows: The complainant is a firm doing money lending business and the accused is the Proprietor of Madathiparambil Rubbers and Agencies. The accused availed a loan of Rs.3,50,000/- from the complainant and in discharge of the said liability, he had drawn and issued Ext.P3 cheque for the said amount and when the complainant presented the cheque for encashment, the same was dishonoured and returned for want of sufficient funds. Though the complainant had caused to issue a lawyer's notice demanding the cheque amount and the accused received the same, he has not paid the cheque amount; nor did he send a reply denying the liability under the cheque.

3. To discharge the initial burden, the

complainant was examined as P.W.1 and Exts.P1 to P9 were marked. After evaluating the aforesaid evidence, the courts below concurrently found that the complainant had 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. I do not find any kind of illegality or perversity in the appreciation of evidence.

4. What remains to be considered is, whether the accused had succeeded in rebutting the presumptions which stood in favour of the complainant. Even though P.W.1 was cross-examined in detail, nothing has been brought out to discredit his testimony. The accused admitted that Ext.P3 cheque was issued by him to the complainant. He also admitted his signature contained in Ext.P3 cheque. The sole contention raised in the defence is that the cheque was issued as a blank signed cheque to the complainant as security. To

substantiate the said contention, no evidence, either oral or documentary, had been adduced. Mere denial is not sufficient to discharge the burden cast upon the accused to rebut the presumptions. That apart, in I.C.D.S. Ltd., v. Beena Shabeer [2002 (3) KLT 218 (SC)], the Apex Court held that the cheque which was issued as security or guarantee would also fall under the mischief under Sec.138 of the N.I. Act. So, even though the cheque was issued as security, he is liable to be proceeded against under Sec.138 of the N.I. Act.

5. Going by the impugned judgment, it is seen that the accused had challenged the competency of the complainant to represent the firm. The complainant has produced Ext.P1 deed of partnership to show that the partnership was re-constituted after the death of one of the partners. Therefore, the courts below rightly rejected the challenge against the competency of P.W.1 to represent the firm. It was also contended that the firm was not a registered one.

Going by Sec.141 of the N.I. Act, an unregistered firm also is fall under Sec.141 of the N.I. Act. Therefore, even though the firm was not a registered one, there is no legal infirmity or illegality in proceeding with the complaint under Sec.138 of the N.I. Act by the firm. Thus, the learned Sessions Judge has rightly considered all the points raised in the appeal and dismissed the appeal. There is no illegality or impropriety in any of the findings in the impugned judgement under challenge.

6. The learned counsel for the Revision Petitioner reiterated the contentions which were raised before the courts below and got rejected concurrently. The learned counsel urged for a re-appreciation of evidence once again, which is not permissible under the revisional jurisdiction unless any kind of perversity is found in the appreciation of evidence. The Revision Petitioner failed to point out any kind of perversity in the appreciation of evidence or illegality or

impropriety in the findings whereby the trial court convicted him.

7. 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.

8. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, seeking some time to

pay the compensation, 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 ₹3,50,000/- (Rupees Three lakhs and fifty thousand only) to the 1st respondent within a period of three months from today as compensation under Sec.357(3) 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 18/12/2015 with sufficient proof to show payment of compensation.

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

period of two months.

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