

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

Crl.Rev.Pet.No. 3401 of 2003 (B1)

AGAINST THE JUDGMENT IN CRL.A 744/2002 of ADDITIONAL SESSIONS
COURT (ADHOC-I), ERNAKULAM DATED 28-08-2003

AGAINST THE JUDGMENT IN CC 293/1999 of J.M.F.C.-I, ERNAKULAM
DATED 28-09-2002

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

N.T.VIJAYAN, S/O. THANKAPPAN PILLAI,
NEDUVELIKUNNEL HOUSE,
KANJIRAMATTAM P.O., ERNAKULAM.

BY ADV. SRI.P.GEORGE VARGHESE

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

1. P.M. AJAYAKUMAR, S/O.MADHAVAN,
POYYATTIL HOUSE,
KULAYATTIKKARA P.O.,
KANJIRAMATTOM, ERNAKULAM.
2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.C.M.SURESH BABU
R1 BY ADV. SRI.G.SANTHOSH KUMAR (P).
R1 BY ADV. SRI.V.K.NAVEENAN
R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 23-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Crl.R.P. No.3401 of 2003

Dated this the 23rd day of June, 2015.

O R D E R

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.744/2002 on the files of the court of the Additional Sessions Judge (Ad hoc-I), Ernakulam. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in C.C.No.293/1999 on the files of the Judicial First Class Magistrate's Court-I, Ernakulam. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for one day till rising of the court and to pay a compensation of Rs.90,000/- to the complainant under Section 357(3) of the Cr.P.C.

and in default to undergo simple imprisonment for three months.

2. The case of the complainant is that the accused borrowed a sum of Rs.80,000/- on 7.2.1998 and in discharge of the said amount Ext.P1 cheque for the said amount was issued in favour of the complainant. When he presented the cheque for encashment, the same got dishonoured and returned for want of sufficient funds. In defence, the accused denied the entire transaction and according to him, the complainant is a stranger with whom the accused had no acquaintance. To prove the said contention he had examined D.W.2 to D.W.5. But after considering the evidence of D.W.2 to D.W.5 the court below found that their evidence cannot be relied on to accept the contention that the accused had no acquaintance with the complainant. Going by the judgment it is seen that D.W.1 the Assistant Secretary of Keecheri Service Co-operative Bank was examined to prove that the complainant had not withdrawn the amount as claimed by him. But after considering the evidence of D.W.1 and P.W.1 it has come out in evidence

that on 16.8.1999 P.W.1 had withdrawn the amount of Rs.24,000/- in fixed deposit from the said bank. But no amount had been withdrawn during August 1998. As rightly held by the court below even if he has not withdrawn the amount from that bank as claimed by the complainant it cannot be held that he has no account in any other bank and no cross-examination had been made so as to rule out the possibility of withdrawal from any other bank. All the above contentions have to be brushed aside to the non-explanation as to how the cheque happened to be in the possession of the complainant. The only contention raised by the accused is that such cheque leaves were missed from his house and the complainant somehow managed to obtain them and filed the present complaint against him. Thus, in the absence of a consistent case as to how the cheque leaves happened to be in the possession of the complainant, the court below can be justified in finding that the accused miserably failed to rebut the presumption under Sections 139 and 118(a) of the N.I. Act. It is to be borne in mind that the accused himself

admitted the signature in the cheque and it was also admitted that the said cheque was one drawn on the account maintained in his bank. Normally a drawer will put signature at the time of issuing the same as and when required. So, he should have explained the circumstance on which he put signature in advance in blank cheque leaves and kept as such in his house.

3. 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 v. 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.

4. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, the revision petitioner is given 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. He shall pay a compensation of Rs.90,000/- (Rupees Ninety thousand only) to the 1st respondent/complainant, within a period of three months from today under Section 357 (3) of the Cr.P.C..
- iii. He shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 23/9/2015 with sufficient proof to show payment of compensation.
- iv. In default, he shall undergo simple imprisonment for a period of three months.

The Criminal revision petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.