

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

Cr1.Rev.Pet.No. 615 of 2005 (B)

AGAINST THE JUDGMENT IN CRL.A.NO. 1161/2003 of ADDL.
SESSIONS COURT (ADHOC)-II, ERNAKULAM DATED 08-02-2005

AGAINST THE JUDGMENT IN CC 554/2000 of JUDICIAL
MAGISTRATE OF THE FIRST CLASS-I, ERNAKULAM DATED
24-11-2003

REVISION PETITIONER/APPELLANT/ACCUSED:

TAHA.K.M., ZABIR MANZIL,
PONNARIMANGALAM, MULAVUKAD P.O.,
ERNAKULAM DISTRICT.

BY ADV. SRI.SHAHUL HAMEED MOOPPAN

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

1. GEORGE.I., MADAVANA HOUSE,
XLIII/1224-A, PACHALAM, KOCHI-12.

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

R1 BY ADV. SRI.K.K.SATHEESH

BY ADV. SRI.K.B.DAYAL

R2 BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 18-08-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.615 of 2005

Dated this the 18th day of August, 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.1161/2003 on the files of the Additional Sessions Judge (Ad hoc-II), Ernakulam. The above appeal was filed challenging the judgment whereby the Revision Petitioner was guilty of the said offence, passed in C.C.No.554/2000 on the files of the Judicial First Class Magistrate's Court-I, Ernakulam. According to the impugned judgment, the Revision

Petitioner stands sentenced to pAY fine of Rs.5,000/-, in default, to undergo simple imprisonment for three months and also to pay a sum of Rs.35,000/- as compensation to the complainant under Sec.357(3) of the Cr.P.C. In default, to undergo simple imprisonment for three months.

2. The case of the appellant is that the accused borrowed an amount of Rs.35,000/- from him and in discharge of the said debt, the accused drawn and issued Ext.P1 cheque dated 28/10/1997 for an amount of Rs.35,000/- and when he presented the cheque for encashment, the same was dishonoured and returned for want of sufficient funds. Despite the receipt of notice, he didn't pay the cheque amount and thereby, he has committed the offence alleged against him.

3. To discharge the initial burden, the complainant was examined as P.W.1 and Exts.P1 to P7 were marked. On an appraisal of the aforesaid evidence, the courts below concurrently found that the complainant has successfully proved the drawing and

issuance of the cheque as contemplated under Sec.138 of the N.I. Act and thereby, the presumptions under the N.I. Act would stand in favour of the complainant. I do not find any perversity in the appreciation of the said evidence.

4. What remains to be considered is, whether the accused has succeeded in rebutting the presumptions, which stood in favour of the complainant. The accused admitted the signature in the cheque as well as the issuance of the cheque to the complainant. But, he further contended that Ext.P1 was a signed blank cheque issued to the complainant as security when he borrowed Rs.5,000/- from the complainant with an undertaking to repay the same by way of instalments at the rate of Rs.100/- per day. To substantiate the said contention, D.Ws.1 to D3 were examined. After analysing the evidence of these witnesses, the courts below concurrently found that their evidence is mutually opposite and destructive. Going by the findings, I also concurred

with the view of the courts below and there is no perversity in the appreciation of evidence. The revisional jurisdiction is confined to examination of legality, impropriety and correctness of the findings of the courts below and this court is not inclined to substitute its own view, unless any kind of perversity is seen apparent on the face of the findings. Thus, there is no illegality or impropriety in the judgment under challenge. That apart, a cheque issued as security would also fall under the mischief of the offence under Sec.138 of the N.I. Act in view of the decision reported in *I.C.D.S. Ltd. v. Beena Shabeer* [2002 (3) KLT 218 (SC)]. In *Lillykutty v. Lawrence* [2003 (3) KLT 721], this Court held that no law provides that the entire body of the cheque has to be written by the drawer only in his own handwriting and what is material is the signature of the drawer and not body of the instrument. In *Moideen v. Johny* [2006 (3) KLT SN 62 - Case No.85], this Court held that when the drawer issues a blank signed cheque, he

conveys an implied authority to fill up the cheque and to quantify the amount, to the payee. In view of the above decisions also, the court below is justified in finding that the accused is guilty of the said offence.

5. 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.

6. The learned counsel for the revision petitioner submits that the sentence imposed on the revision petitioner is disproportionate with the nature and gravity of the offence and the same is liable to be modified.

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. Consequently, the substantive sentence of simple imprisonment for three months will stand reduced and modified to simple imprisonment for one day till rising of the court and four months time is given to pay the compensation. In supersession of the sentence imposed by the trial court and confirmed by

the appellate court, the revision petitioner will stand sentenced as follows:

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

ii. The Revision Petitioner shall pay ₹35,000/- (Rupees Thirty five thousand only) within a period of four months from today to the first respondent/complainant 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 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)

Nan/

//true copy//

P.S. to Judge