

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

Crl.Rev.Pet.No. 311 of 2007 (E)

AGAINST THE JUDGMENT IN CRL.A 187/2006 of ADDL. DISTRICT &
SESSIONS COURT (ADHOC)-II, THODUPUZHA DATED 30-09-2006

AGAINST THE JUDGMENT IN ST 700/2005 of J.F.C.M.COURT-I,
PEERMADE DATED 02-06-2006

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

V.K.SHOBHANA, W/O.KAMALADHARAN,
CLERK, MUNDAKAYAM SERVICE CO-OPERATIVE BANK,
MUNDAKAYAM.

BY ADVS. SRI.TITUS MANI VETOM
SRI.SURAJ SUKUMARAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE:

1. NOUSHAD V. BAVA,
S/O.V.A.BAVA, VELLAPALLIYIL VEEDU, PAMBANAR KARA,
PEERMADE.

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

R2 BY PUBLIC PROSECUTOR SRI.N. SURESH
R1 BY ADV. SRI.T.A.UNNIKRISHNAN
R1 BY ADV. SRI.K.SATHEESH KUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 16-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Cr1.R.P. No.311 of 2007

Dated this the 16th day of September, 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.187/2006 on the files of the Additional District & Sessions Judge (Ad hoc)-II, Thodupuzha. The above appeal was filed challenging the judgment, whereby the revision petitioner was found guilty of the said offence, passed in S.T.No.700/2005 on the files of the Judicial First Class Magistrate's Court-I, Peermade. According to the impugned judgment, the revision petitioner stands sentenced to undergo simple imprisonment for three months and to pay a compensation of Rs.1,50,000/- to the complainant as compensation under Section 357(3)

of the Cr.P.C. and in default to undergo simple imprisonment for three months.

2. The complainant's case is that, on 2.2.2005, the accused borrowed an amount of Rs.1,50,000/- from him and that in discharge of the said liability the accused executed and issued Ext.P1 cheque for the said amount to the complainant and, when he presented the cheque for encashment, the same was dishonoured and returned for want of sufficient funds. In spite of the receipt of notice demanding the cheque amount, the accused neither paid the cheque amount nor sent a reply denying the liability.

3. To discharge the initial burden, the complainant was examined as P.W.1 and Exts.P1 to P7 were marked. On appraisal of the evidence on record, the courts below concurrently found that the complainant successfully discharged the initial burden of proving the execution and issuance of the cheque. I do not find any reason to unsettle the said finding.

4. To rebut the presumptions under Sections 139

and 118(a) of the N.I. Act, which stood in favour of the complainant, no evidence had been adduced by the accused. She admitted that Ext.P1 cheque is one issued from her account maintained in the bank. She denied the incriminating evidence against her and stated that she did not know the accused and she did not borrow any money from the complainant. When the complainant was cross examined, no serious contentions were taken so as to improbabilise the case of the complainant. In short, she has no explanation as to how Ext.P1 cheque happened to be in the possession of the complainant. When questioned under Section 313 of the Cr.P.C., the accused did not put forth any specific defence. In view of the evidence available on record, the courts below are justified in finding that the accused miserably failed to rebut the presumptions which stood in favour of the complainant. There is no illegality or impropriety in any of the findings in the impugned judgment.

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 re-appreciation of evidence, 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 her.

6. The learned counsel submits that he has no instruction from the petitioner and he intends to relinquish the vakalath. Having regard to the fact that this revision petition was filed in the year 2007 and pending before this Court for the last eight years, I find that it can be disposed of on merits, even if in the absence of representation from the petitioner.

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 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.

8. In the light of the decisions referred above, I find that the substantive sentence imposed on the revision petitioner is disproportionate with the nature and gravity of the offence. 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 the revision petitioner is given three months time to pay the compensation.

9. In supersession of the sentence imposed by the trial court and modified 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. She shall pay Rs.1,50,000/- (Rupees One lakh and fifty thousand only) to the 1st respondent/complainant as compensation under Section 357(3) of the Cr.P.C. within a period of three months from today.

iii. She shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 16.12.2015 with sufficient proof to show payment of compensation.

iv. In default, she shall undergo simple imprisonment for a period of three months.

v. If she 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.

This criminal revision petition is disposed of.

Sd/-
K. HARILAL, JUDGE

okb.