

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

Crl.Rev.Pet.No. 328 of 2009 ()

Crl.A.No.81 of 2008 of ADDL. SESSIONS JUDGE - III, KOZHIKODE.

C.C.No.129 of 2007 of JUDICIAL FIRST CLASS MAGISTRATE - II, PERAMBRA

REVISION PETITIONER/APPELLANT/ACCUSED:

**P.P. ELLYAS, S/O. MOIDEENKUNHI,
SABITH MANZIL, KALLAIRPARAMBIL,
PERUVAYAL.P.O., KOZHIKODE.**

**BY ADVS.SRI.BABU CHERUKARA
SMT.LISSYMOL AMBOOKEN**

RESPONDENTS/RESPONDENTS/COMPLAINANT & RESPONDENT:

**1. IBRAHIM.M, S/O. MOHAMMED,
ARIYIL HOUSE, VELUR, ATHOLI,
KOYILANDY, KOZHIKODE.**

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

**R1 BY ADV. SRI.V.KRISHNA MENON
R2 BY PUBLIC PROSECUTOR : SMT. M. MADHUBEN**

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 13-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

skr

K. HARILAL, J.

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Crl.R.P.No. 328 of 2009

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Dated this the 13th day of October, 2015

O R D E R

The revision petitioner is the accused in C.C.No.129 of 2007 on the file of Judicial First Class Magistrate Court-II, Perambra as well as the appellant in Crl.Appl.No. 81 of 2008 on the file of Sessions Court, Kozhikode Division. Now he stands convicted the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced thereunder. According to the judgment passed in appeal, he was sentenced to undergo simple imprisonment for one day till rising of the court and to pay a fine of Rs. 40,000/- (Rupees forty thousand only) under Section 138 of the Negotiable Instruments Act and in default of payment of fine, he shall undergo simple imprisonment for two months if the fine amount is realized the same shall be given to the complainant as compensation under Section 357 of the Cr.P.C. The

concurrent findings of conviction and sentence are under challenge in this revision petition.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents. Both counsels advanced the arguments in support of the contentions raised in appeal and they considered by the appellate court.

3. The scope of interference under revisional jurisdiction very limited and confined to examination of a legality, a propriety, a regularity and the correctness of the findings of the inferior court and there is no scope of re-appreciation of evidence unless the findings of the court are so perverse and unaccepted.

4. With the above yard stick, I have scrutinized the impugned judgments under challenge. The complainant's case is that the accused borrowed a loan for Rs. 80,000/- (Rupees eighty thousand only) from him and towards the partial discharge of the said amount, the accused had drawn and issued Ext.P1 and P2 cheques for Rs.20,000/- each dated 30.05.2006 and 30.06.2006 respectively and when he

presented the cheque for encashment and same was dishonoured and returned for want of sufficient funds and thereby the accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act.

5. In defence, the accused contended that he had neither borrowed any amount nor issued Exts.P1 and P2 cheques to the complainant. It is a further case of the accused that he was working as an agent under the complainant and in that transaction with the complainant he had given five signed cheques as security to the complainant. After sometime, he stopped the transaction with the complainant and thereafter the complainant had returned only one cheque. Ext.P1 is one among the four cheques remained in his possession and the same was misused for prosecuting him. Though, the accused had produced Exts. D1 to D21 invoice receipts to prove the transaction with the complainant, those evidence are not sufficient to prove that he had issued signed blank cheques to the complainant. As rightly observed by the appellate court, if he had issued signed blank cheque when he stopped the

business transactions with the complainant, he would have taken steps to get back the cheques from the complainant. No steps had been taken in this respect till dishonour of the Ext.P1 cheque. No interference could be drawn from Exts.D1 to D21, to the effect that the cheques were issued in a blank signed form to the complainant. So also after scrutinizing the evidence of PW1, the court below concurrently observed that no material contradictions were brought out in evidence to discredit the evidence of PW1. In the above analysis, the court below is justified in finding that the accused miserably failed to rebut the presumptions under Sections 139 and 118(a) of Negotiable Instruments Act, which stood in favour of the complainant. There is no illegality or impropriety in any of the findings and I do not find any perversity in the appreciation of evidence. Therefore, the concurrent findings of conviction would stand confirmed.

6. The learned counsel for the petitioner further submits that the sentence imposed on the revision petitioner is disproportionate with nature and gravity of the offence

contemplated under Section 138 of the Negotiable Instruments Act. The sentence imposed on the revision petitioner is also excessive and deserve to be reduced. At last the learned counsel urged for granting some time to pay the compensation if the revision petitioner is found meritless.

7. Having regard to the submission at the bar and the nature and gravity of the offence under Section 138 of the Negotiable Instruments Act. The petitioner is given three months time to pay the compensation. Consequently, the sentence will stand modified as follows:

- 1.The revision petitioner shall undergo simple imprisonment or one day till rising of the court.
- 2.The revision petitioner shall pay a fine of Rs. 40,000/-(Rupees forty thousand only) within a period of three months from today and the same shall be given to the complainant as compensation under Section 357(1)(b) of the Cr.P.C.

3.The revision petitioner shall appear before the lower court to suffer the aforesaid sentence on or before 12.01.2016 with the sufficient proof to show the payment of the fine.

4.In default, he shall undergo simple imprisonment for two months.

5.If the revision petitioner had deposited any amount in compliance with interim order of this court or the appellate court, the same shall be given credit to and the balance alone needs to be paid as fine.

This revision petition is disposed of accordingly.

Sd/-
K.HARILAL,
JUDGE.

Skr

//True copy//

PA to Judge