

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

Crl.Rev.Pet.No. 1342 of 2006  
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AGAINST THE JUDGMENT IN CRL.A.NO. 388/2004 of ADDITIONAL  
SESSIONS COURT-II, MAVELIKKARA DATED 05-01-2006

AGAINST THE JUDGMENT IN CC 352/2003 of J.M.F.C., HARIPAD  
DATED 25-06-2004

REVISION PETITIONER/APPELLANT/ACCUSED:  
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SUJA KUMARI,  
W/O.SURESH, SARADALAYAM, KUTHUKULAM SOUTH MURI,  
MUTHUKULAM SOUTH.P.O.

BY ADVS.SRI.GEORGE VARGHESE (PERUMPALLIKUTTIYIL)  
SRI.A.R.DILEEP  
SMT.KAVITHA GANGADHARAN

RESPONDENTS/RESPONDENTS/COMPLAINANT AND STATE:  
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1. STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM-682 031.

2. RATNAMMA, SANTHAN NILAYAM,  
EVOOR SOUTH MURI, PATHIYOOR VILLAGE.

R2 BY ADV. SRI.B.RENJITHKUMAR  
R1 BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY  
HEARD ON 07-08-2015, THE COURT ON THE SAME DAY PASSED  
THE FOLLOWING:

**K. HARILAL, J.**

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**Crl.R.P. No. 1342 of 2006**  
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**Dated this the 7<sup>th</sup> 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.388/2004 on the files of the II Additional Sessions Judge, Mavelikara. The above appeal was filed challenging the judgment where by the Revision Petitioner was found guilty of the said offence, passed in C.C.No.352/2003 on the files of the Judicial First Class Magistrate's Court-I, Haripad. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple

imprisonment for six months under Sec.138 of the N.I. Act. She is directed to pay a compensation of Rs.4,10,000/- to the complainant under Sec.357(3) of the Cr.P.C. In default, to undergo simple imprisonment for two months.

2. The complainant's case is as follows: During November-December period of 2002, the accused borrowed Rs.4,000,00/- from the complainant undertaking to repay the same before 28/3/2003. On 28/3/2003, the accused had drawn and issued Ext.P1 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. Despite the receipt of the notice demanding the cheque amount, the accused has not paid the said amount and thereby, she has committed the offence punishable under Sec.138 of the N.I. Act.

3. To discharge the initial burden, the complainant was examined as P.W.1 and Exts.P1 to P5 were marked. After analysing the aforesaid evidence,

the courts below concurrently arrived at a finding that the complainant had successfully discharged the initial burden by proving the execution and issuance of the cheque; and thereby, the presumptions under Secs.139 and 118(a) of the N.I. would stand in favour of the complainant.

4. In defence, the accused mainly contended that the complainant had failed to prove that she was keeping such a huge amount in her hand so as to lend the same, when the accused made a request to lend the said amount. It was also contended that the notice under Sec.138(b) of the N.I. Act has not been served properly, in accordance with the statutory requirements.

5. To substantiate the above contention, the husband of the accused was examined as D.W.1 and Exts.D1 to D3 were marked. Ext.D1 is a lawyer's notice dated 5/3/2003 issued by the present complainant to the husband of the accused in connection with dishonour of cheque No.080365 dated

24/12/2002 for Rs.4,000,00/-. Ext.D2 is a postal receipt pertaining to Ext.D3 reply notice issued by the husband's lawyer in response to Ext.D1 notice. The specific contention of the complainant towards these documents is that Exts.D1 to D3 had no proximity or connection with the present transaction with the accused. When she was cross-examined, she deposed that there were several transactions between the husband of the complainant and also with the accused. But, the accused failed to connect the present transaction with Exts.D1 to D3 and as such, those documents are of no consequences at all. As regards the availability of the money on hand, the complainant had clarified that the accused received Rs.2,000,00/- on 15/11/2002 and the balance of Rs.2,00,000/- on 15/12/2002. According to the complainant, she is a money lender having locker facility in the bank and the money was being kept in safe custody in that locker. This evidence of the complainant stands unchallenged. At this point, the

law settled by the this Court in Johnson Scaria v. State of Kerala [2006 (4) KLT 290] assumes significance and relevancy. In this decision this Court held that it is not the burden on the complainant in every case so long as the presumptions under Sec.139 of the N.I. Act stands, to plead, to prove and establish the original transaction/original consideration to discharge the liability in which the cheque is issued. Admission of the signature in the cheque goes a long way towards execution of the cheque and the possession of the cheque on the hand of the complainant goes a long way towards issuance of the cheque. In view of the above decision, no inference can be drawn to the effect that the complainant could not have kept such a huge amount on her hand.

6. The learned counsel for the revision petitioner/accused cited the decision reported in John K. Abraham v. Simon C. Abraham[2014 (1) KLT 90 (SC)], wherein the Apex Court held that in order to draw the presumptions under Secs.139 and 118(a) of

the N.I. Act, the burden is heavy upon the complainant to show that he had the required fund for advancing the money to the accused. In the instant case, admittedly, the complainant is a money lender and her admitted case is that earlier there were several money transactions by way of lending money with the accused and in the cross-examination, nothing brought out to discredit the said evidence of the complainant. The accused has no case that earlier she has not availed of loans from the complainant as claimed by her. So, the above decision has no application in the instant case, in view of the admitted facts.

7. It is the specific case of the complainant that the cheque was signed in her presence and the same stands unchallenged. No step was taken to examine the signature in the cheque by an expert. No direct evidence was adduced to rebut the presumption, except the evidence of D.W.1 and Exts.D1 to D3 which stand unconnected with the present transaction.

8. Though it was contended that no proper notice was issued under Sec.138(b) of the N.I. Act to the accused, the accused miserably failed to substantiate any infraction in the statutory requirements under Sec.138(b) or Sec.142(b) of the N.I. Act. In the absence of any contra evidence or compelling reasons, it has to be presumed that the cheque was not a blank cheque and it was handed over as a cheque referred to in Sec.138 of the N.I. Act.

9. The case of the accused is that except signature, other entires in Ext.P1 cheque were made by the complainant. Even if the cheque was filled up by another person, that does not make the cheque invalid, in the absence of any statutory requirements under the Negotiable Instruments Act requiring the drawing of the cheque by the drawer himself in his own handwriting. 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 the payee to fill up and quantify

the amount. In Lillykutty v. Lawrance [2003 (3) KLT 721] this Court held that mere fact that payee's name and amount shown are not in the handwriting of the drawer does not invalidate the cheque. No law provides that entire body of the cheque has to be written by the drawer only in his own handwriting what is material is signature of the drawer only and not body of the instrument. So, the contention that the signed blank cheque was issued to the complainant pales to insignificance and irrelevance. There is no illegality or impropriety in any of the findings in the impugned judgment. Therefore, the concurrent findings of conviction will stand upheld.

10. Coming to the sentence, the learned counsel for the petitioner submits that the sentence imposed on the revision petitioner is excessive and disproportionate with the nature and gravity of the offence. The substantive sentence of imprisonment imposed on the revision petitioner is also harsh and liable to be set aside in view of the decisions laid down

by the Apex Court, so contended by the counsel.

11. 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.

12. In the light of the above decisions, I find that the sentence imposed on the revision petitioner is disproportionate with the nature and gravity of the offence. Consequently, the substantive sentence of simple imprisonment for six 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 supersessions of the sentence imposed by the trial court and confirmed by the appellant 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 a compensation of ₹4,10,000/- (Rupees Four lakhs and ten thousand only) to the 2nd respondent/ complainant within a period of four months from today 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 07/12/2015 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