IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

Crl.Rev.Pet.No. 1408 of 2006 (A2)

AGAINST THE JUDGMENT IN CRL.A 618/2004 of I ADDL. SESSIONS COURT, THRISSUR DATED 21-01-2006

AGAINST THE JUDGMENT IN ST 99/2003 of C.J.M. COURT,THRISSUR DATED 07-10-2004

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

T.G.UNNIKRISHNAN, S/O. GOPALAN NAIR,
MANGATPARAMBIL HOUSE, VADAKKANCHERRY,
(WORKING AS LD CLERK, HIGHER GRADE, ASST. LABOUR OFFICE, SHORNUR.)

BY ADV. SRI.P.K.ANIL

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

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1. SHAMMY JOSE, S/O. JOSE,
KANIMANGALATHUKARAN HOUSE, CHIYYARAM P.O.
THRISSUR DISTRICT.

2. STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.K.A.SREEJITH
R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

OKB

K.HARILAL, J.

Crl.R.P. No.1408 of 2006

Dated this the 9th day of July, 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.618/2004 on the files of the court of the I Additional Sessions Judge, Thrissur. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in S.T.No.99/2003 on the files of the Chief Judicial Magistrate's Court, Thrissur. According to the impugned judgment, the revision petitioner was sentenced to pay a fine of Rs.45,000/- and in default to undergo simple imprisonment for three months. If the fine amount is realised, Rs.40,000/- will be given to the complainant as compensation under Section 357(1) of the Cr.P.C.

2. The case of the complainant is that the accused borrowed an amount of Rs.30,000/- for the complainant in discharge of the said liability he issued Ext.P1 cheque dated 25.1.2003 for the said amount in favour of the complainant and when the cheque was presented for encashment, it got dishonoured and returned for want of sufficient funds. Thus he committed the offence under Section 138 of the N.I. Act. When the complainant caused to issue a lawyer notice demanding the said amount, the accused neither paid the cheque amount nor sent a reply notice denying the liability. In 313 statement, the accused put up a case that he borrowed Rs.4,500/- from one William and two signed blank cheques were issued and one of those cheques was misused by the complainant and filed the present complaint. Thus, it is seen that the signature in Ext.P1 cheque is not disputed. Though he contended that the cheque was a signed blank cheque, which was given to

the said William, he has not cared to establish the probability of the said contention by adducing evidence by examining the said William as a witness from his side. How the cheque, which was given to William, happened to be in the possession of the complainant? No explanation was forthcoming from the accused. So also, he failed to send a reply notice denying the said liability at the earliest opportunity itself. The said failure is a strong circumstance pointing towards the lack of bona fides in the belated contention raised in defence. In this analysis, I find that there is no illegality or impropriety in the finding of the court below that the accused failed to rebut presumption under Sections 118(a) and 139 of the N.I. Act., which stood in favour of the complainant.

3. The courts below had concurrently found that the complainant/1st respondent had successfully discharged the initial burden of proving execution and issuance of the cheque; whereas the revision petitioner had failed to rebut the presumption under

Sections 118(a) and 139 of the N.I. Act, which stood in favour of the 1st respondent. So also, it is found that the debt due to the 1st respondent was a legally enforceable debt and Ext.P1 cheque was duly executed and issued in discharge of the said debt.

4. This Court is satisfied that the courts below had meticulously evaluated the evidence on record. I do not find any kind of illegality or impropriety in the said findings or perversity in the appreciation of evidence, from which the above findings had been arrived at. Therefore, I am not inclined to re-appreciate entire evidence once again and I confirm the concurrent findings of conviction.

5. 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.

6. 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 is sentenced to pay a fine of Rs.45,000/- 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.
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> (ii). In default, he shall undergo simple imprisonment for three months.
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> (iii). If the revision petitioner had deposited any amount in the trial court, in compliance with the direction of this

Court or appellate court, that amount shall be given credit to and the balance alone need be paid as compensation. In that event, the 1st respondent/ complainant is allowed to realise such deposit, if any.

The Criminal revision petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.