

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

Crl.Rev.Pet.No. 925 of 2005 (A1)

AGAINST THE JUDGMENT IN CRL.A 231/2003 of SESSIONS COURT,
KOZHIKODE DATED 09-3-2005

AGAINST THE JUDGMENT IN CC 790/1999 of J.F.C.M.COURT -IV,
KOZHIKODE DATED 29-03-2003

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REVISION PETITIONER(S)/APPELLANT/ACCUSED::

A.P.MUJEEB, S/O.IMBICHI MAMMI HAJI,
M/S. HOTEL AMAR, MAVOOR ROAD, CALICUT-4.

BY ADV. SRI.SUNNY MATHEW

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE::

1. C.J.T.WILLIAMS,
MANAGER, MUTHOOT LEASING AND FINANCE LTD.,
MAVOOR ROAD, CALICUT-4.

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

R1 BY ADV. SRI.S.NIDHEESH

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 11-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Cr1.R.P. No.925 of 2005

Dated this the 11th day of June, 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.231/2003 on the files of the court of the Sessions Judge, Kozhikode Division. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in C.C.No.790/1999 on the files of the Judicial First Class Magistrate's Court-IV, Kozhikode. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for one month only.

2. The complainant's case is that towards the discharge of the loan dues with the Muthoot Leasing and Finance Ltd., the accused issued a cheque dated

27.11.1998 for Rs.2,30,608/- drawn on the Bank of India, Mavoor Road, Kozhikode. When the cheque was presented for encashment, the same was dishonoured stating 'payment stopped by the drawer'. Though statutory notice was issued demanding the cheque amount, the accused neither paid money nor sent any reply.

3. Per contra, in defence, the accused contended that at the time when he availed the loan from the complainant, signed blank cheques were issued to the complainant, and one of such signed blank cheques is misused to prosecute him for the offence under Section 138 of the N.I.Act. It is also contended that there is substantial difference in the amount due to the complainant.

4. To substantiate the contention that the amount shown in Ext.P2 cheque was not due to the complainant the accused had produced Exts.D1 to D3. It is revealed from Ext.D3 that the complainant sued for recovery of Rs.2,51,909/- made up of Rs.1,87,075/- being the amount payable for 18th to 36th instalments and Rs.64,834/-

being the additional finance charges (interest claimed @ 36%) and in addition to that the complainant claimed future interest @ 36% from the date of suit. But the civil court allowed the complainant to recover Rs.1,87,075/- with interest @ 18% per annum amounting to Rs.33,417/- with future interest @ 6% per annum. But the amount claimed by Ext.P2 is Rs.2,30,608/-. That is the amount which the complainant claimed in the manner claimed in the plaint. I am of the opinion that merely on the reason that civil court has not allowed the plaint amount as such and allowed interest at 18% and future interest @ 6% per annum it cannot be held that the cheque amount is not due or the same is not legally enforceable from the accused. It is the specific case of the accused that he handed over a signed blank cheque as security for the receipt of the amount from the complainant. In I.C.D.S. Ltd. v. Beena Shabeer [2002 (3) KLT 218 (SC)], the Apex Court held that a cheque given as security for the liability of the accused or for the liability of any person would also fall under the mischief of offence punishable under

Section 138 of the N.I. Act. In *Bhaskaran Nair v. Abdul Kareem* [2006 (4) KLT 48], this Court held that the defence that a signed blank cheque was handed over by an account holder is intrinsically suspicious one and must be appreciated with great care and caution. No account holder is expected to deal with a cheque in such a casual, careless, irresponsible and indifferent manner and such a defence is impossible. This Court, in *Lillykutty v. Lawrance* [2003 (3) KLT 721] held that the mere fact that the payee's name and amount shown are not in the hand writing of the drawer does not invalidate the cheque. No law provides that body of the cheque has to be written by drawer only in his own handwriting. What is material is the signature of the drawer only and not the body of the instrument. Further, in *Moideen v. Johnny* [2006 (3) KLT SN 62], this Court held that by issuing a signed blank cheque the drawer conveys an implied authority to fill up the cheque and present the same for encashment. If that be so, more importantly, in this case, there is no evidence to show that the revision petitioner had

issued a signed blank cheque. In the absence of such evidence, it could be presumed that the complainant received the cheque of the nature referred to in Section 138 of the N.I. Act for the discharge of the liability of the accused and the cheque was drawn for consideration. In the absence of rebuttal evidence, I do not find any illegality in the finding that the accused miserably failed to rebut the presumption under Sections 139 and 118(a), which stood in favour of the complainant.

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

6. Going by the impugned judgment passed in appeal, it is seen that the trial court has not awarded compensation to the revision petitioner presumably on a finding that the complainant has obtained a decree for recovery of money. The nonpayment of compensation was not challenged in appeal by the complainant. In such situation, the appellate court is

justified in not granting the compensation.

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 of imprisonment imposed on the revision petitioner is also excessive and disproportionate with the nature and gravity of the offence. Consequently, the substantive sentence of simple imprisonment for one month will stand

reduced and modified to simple imprisonment for one day till the rising of the court only.

This criminal revision petition is disposed of.

Sd/-
K. HARILAL, JUDGE

okb.