

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

Crl.Rev.Pet.No. 686 of 2007 ()

AGAINST THE JUDGMENT IN CRA 295/2003 of II ADDL.SESIONS JUDGE,
KOLLAM, DATED 01-08-2006

AGAINST THE JUDGMENT IN CC 205/2000 of J.M.F.C.-II, KOLLAM
DATED 30-08-2003

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

MEENAKSHI, SHYLAJA TECHNICAL SCHOOL,
R.NO.C3/14369/81, PULIYATHMUKKU, AYATHIL P.O.
KOLLAM.

BY ADV. SRI.G.BHAGAVAT SINGH

RESPONDENT(S)/COMPLAINANT AND STATE:

1. K.SHAMSUDHEEN, S.J.MANZIL,
KANNANALLOOR P.O., KOLLAM.
2. THE STATE OF KERALA, REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JUSTIN JACOB
R1 BY ADV. SRI.S.M.ALTHAF

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 26-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.Rev.Pet.No. 686 of 2007

APPENDIX

REVISION PETITIONER'S EXHIBITS :

ANNEXURE 1 : PHOTOCOPY OF CMP NO.3734/03 IN C.C.NO.205/00 DATED 2.5.2003 FILED BEFORE THE JFMC-II, KOLLAM.

ANNEXURE 2 : PHOTOCOPY OF THE ORDER DATED 8.5.2003 IN CMP NO.3734/03 IN C.C.NO.205/00 BY THE JFMC-II, KOLLAM.

RESPONDENTS' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE

ami/

V.K.MOHANAN, J.

Crl.R.P.No.686 of 2007

Dated this the 26th day of March, 2015.

O R D E R

The revision petitioner who is the accused in C.C.No.205/00 of the court of Judicial First Class Magistrate-II, Kollam, preferred the above revision petition challenging her conviction and sentence for the offence under section 138 of the Negotiable Instruments Act.

2. The 1st respondent herein preferred a complaint against the petitioner alleging offence punishable under section 138 of the NI Act and as per the allegation of the complainant, the revision petitioner herein had borrowed an amount of Rs.65,000/- from the complainant and towards the discharge of the said liability, the petitioner has issued Ext.P1 cheque, which when presented for encashment, dishonoured for the reason that funds insufficient in the account of the accused. According to the

complainant, though he caused to sent legal notice to the petitioner/accused and though she accepted the same, no amount covered by the dishonoured cheque was paid and thus according to the complainant, the accused has committed the offence punishable under section 138 of the NI Act.

3. With the above allegation, the respondent/complainant approached the trial court by filing a complaint and the court below took cognizance upon the offence alleged against the petitioner and instituted C.C.No.205/00 on the file of the court of JFCM-II, Kollam, and during the trial of the case, from the side of the complainant, the complainant himself was examined as PW1 and marked Exts.P1 to P6 documents. Whereas from the side of the defence, Dws.1 and 2 were examined but no document is produced. The trial court finally found that Ext.P1 cheque was issued in discharge of a legally enforceable debt and accordingly, the revision petitioner

found guilty of the offence under section 138 of the NI Act. Consequently, she is convicted for the offence under section 138 of the NI Act and sentenced to undergo simple imprisonment for 6 months and to pay an amount of Rs.65,000/- as compensation to the complainant under section 357(3) of Cr.P.C. and in default of payment of compensation, the accused is directed to undergo simple imprisonment for 6 months.

4. Aggrieved by the above judgment and order of conviction and sentence, the revision petitioner had preferred Crl.A.No.295/03 before the court of the II Additional Sessions Judge, Kollam. However, the learned Judge of the lower appellate court, dismissed the appeal confirming the conviction and sentence. It is against the above concurrent findings of the courts below, the accused preferred the above revision petition.

5. Heard Sri.G.Bhagavat Singh, the learned counsel appearing for the revision petitioner and Sri.S.M.Althaf, the

learned counsel appearing for the 1st respondent.

6. The learned counsel for the revision petitioner, after taking me through Annexures 1 and 2, it is submitted that Ext.P1 cheque was stolen by the 1st respondent/complainant, who had access to the tailoring school conducted by the accused and though the revision petitioner disputed the signature contained in Ext.P1 cheque, the court below simply rejected the same without sending Ext.P1 cheque for expert opinion. So, according to the learned counsel, it is a fit case to be remitted back to the trial court for fresh disposal after sending Ext.P1 cheque for expert opinion. Whereas the learned counsel for the respondent/complainant submitted that the evidence on record relied on by the trial court as well as the appellate court are intact and in favour of the complainant, and the revision petitioner has failed to make out any case against the concurrent findings of the trial court as well as the appellate court and therefore this Court will not be justified

in interfering with the order of the conviction recorded by both the courts below.

7. I have carefully considered the submissions made by the learned counsel for the petitioner as well as the respondent and I have perused the materials on record.

8. It is true that the petitioner took a contention disputing the signature contained in Ext.P1 cheque and the accused preferred a petition which resulted in Annexure 2 order. In Annexure 2 order, the learned Magistrate has found that during the 313 examination of the accused, she has no case that the signature contained in Ext.P1 cheque was not that of her. The learned Magistrate after scrutiny and appreciation of her signature seen in the vakalat, acknowledgment card, bail bond etc., came into a conclusion that the signature in those documents and in Ext.P1 are similar and finally the said petition was dismissed. However, Annexure 2 order was not challenged by the petitioner and thus Annexure 2 order became final.

The trial court, after having perusal and comparison of the signatures and the signatures available on records, has categorically found that the signature in Ext.P1 cheque is the same. As Annexure 2 order became final, according to me, I find no reason to re-open Annexure 2 order at this belated stage, especially when the petitioner failed to make out a prima facie case to interfere with the findings of the trial court as well as the appellate court. In a decision reported in **Bindu Vs. Sreekantan Nair (2007(1)KLT 525)** in Paragraph 4 it is held that,

"But that observation cannot be understood to mean that admission of signature is equivalent or synonymous with admission of execution. Admission of signature does go a long way in the attempt to prove execution of a document. But the nice legal distinction between admission of signature and admission of execution must always be borne in mind. Admission of signature may in an appropriate case persuade the Court to draw permissive presumptions of fact under S.114 of the Evidence Act. But certainly the right of the accused to contend that a blank signed cheque was mis-utilised by the payee cannot be taken away by such mere admission of signature. Ultimately when the evidence is appreciated the Court shall have to consider whether admission of signature coupled with the other circumstances is sufficient to prove execution. But the right of the accused is to show that only the signature is his/hers and

the other entries are made unauthorisedly by the complainant cannot be taken away."

In the light of the decision cited supra, I am of the view that, the learned Magistrate is fully justified in comparing the signature seen in Ext.P1 cheque with the admitted signatures available on the documents executed by the petitioner and it can be seen that, in the present case, the dispute regarding the signature was taken by the revision petitioner at the fag end of the trial and during the cross examination of respondent/complainant, no such case was put to him. It is also relevant to note that Annexure 2 order became final and the same was not challenged before appropriate forum at appropriate time. The trial court being the fact finding authority, after having comparison of the admitted signatures, has specifically found that the signature found on Ext.P1 cheque is similar to those admitted signatures. If that be so, this Court will not be justified in interfering with the above findings while exercising the revisional powers of this Court.

In the result, I find no merit in the contention advanced by the learned counsel for the revision petitioner and accordingly the revision petition is dismissed.

Sd/-

**V.K.MOHANAN,
Judge.**

ami/

//True copy//

P.A.to Judge