

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

Crl.Rev.Pet.No. 1918 of 2004

AGAINST THE JUDGMENT IN CRA 143/2003 of ADDITIONAL
SESSIONS COURT, NORTH PARAVUR DATED 11-06-2004

AGAINST THE JUDGMENT IN CC 1080/1999 of J.M.F.C.-I, ALUVA
DATED 21-01-2003

REVISION PETITIONER(S)/3RD APPELLANT & 3RD ACCUSED:

SUSAN JIMMY W/O. JIMMY ELIAS,
AGED 36 YEARS, PATTASSERIL HOUSE, NADAMA,
NEAR BOYS HIGH SCHOOL, TRIPUNITHURA.

BY ADVS.SRI.VARGHESE C.KURIAKOSE
SRI.JACOB SEBASTIAN
SRI.PRAVEEN K. JOY

RESPONDENT(S)/RESPONDENT/STATE & COMPLAINANT:

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

2. K.M.HASHIR, MATHUR HOUSE,
KUTTAMASSERY, THOTTUMUKKOM, ALUVA.

R1 BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB
R2 BY ADV. SRI.ANIL K.MOHAMMED
BY ADV. SRI.V.S.MANSOOR

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 18-08-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.1918 of 2004

Dated this the 18th day of August, 2015

ORDER

The revision petitioner is the 3rd accused in C.C. No.1080/99 on the files of the Judicial First Class Magistrate's Court-I, Aluva. 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.143/03 on the files of the Additional Sessions Judge, North Paravur. The above appeal was filed challenging the judgment whereby the Revision Petitioner was found guilty of the said offence, passed in C.C.No.1080/99 on the files of the Judicial First Class Magistrate's Court-I, Aluva.

According to the impugned judgment, the Revision Petitioner stands sentenced to undergo simple imprisonment for six months under Sec.138 of the N.I. Act. He is further directed to pay Rs.1 lakh as compensation 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: The 1st accused is a partnership firm and the 2nd accused is the Managing Partner and 3rd and 4th accused are the partners of the said firm by name "Pattasseril Agencies". The 2nd accused borrowed an amount of Rs.1 lakh for and on behalf of the firm - 1st accused, and accused Nos.3 and 4 were aware of the said borrowal from the complainant. In discharge of the said debt, the 2nd accused issued Ext.P1 cheque of the firm dated 14/9/1999 and when the said cheque was presented for encashment, the same was dishonoured and returned for want of sufficient funds. The accused Nos.3 and 4 were also aware of the issuance of the

cheque for the said amount, by the 2nd respondent. Despite the receipt of the notice, they failed to pay the money or to send a reply notice denying the liability. Thus, they have committed the offence alleged against him.

3. To discharge the initial burden, the complainant was examined as P.W.1 and Exts.P1 to P8 were marked. After analysing the aforesaid evidence, the court below concurrently found that the complainant has successfully discharged the initial burden to prove the execution and issuance of the cheque.

4. The main argument advanced by the learned counsel for the revision petitioner is that the complainant has failed to discharge the initial burden to prove the execution and issuance of the cheque as against the 3rd accused also. There is no evidence to show that the 3rd accused is also responsible to the company for the conduct of the business of the company. There is no pleadings or evidence to that

effect, in view of the mandatory requirements under Sec.141 of the N.I. Act.

5. The prime contention that raised in defence is that accused Nos.3 and 4 are not liable to be proceeded against under Sec.138 of the N.I. Act, in the absence of specific pleadings to the effect that they are also responsible for the drawing and issuance of the cheque. According to them, mere knowledge of the borrowal of the amount from the complainant and the issuance of the cheque for the discharge of that debt is not sufficient to fasten the liability upon them. To substantiate their contention, in defence, D.Ws.1 and 2 were examined. It was also contended that Ext.P1 cheque was issued to one Saly, who was examined as D.W.2. But the said Saly gave evidence to the effect that Ext.P1 cheque was not issued to him by the accused. In his cross-examination, it was brought out, in evidence, that they used to borrow money from him and in discharge of such debt, cheques were also issued to him, which culminated in

the legal action against the accused. But, he deposed that accused Nos.2 to 4 were present whenever he visited the business premises of the accused firm.

6. The courts below relied on the aforesaid evidence of D.W.2 to fasten the liability upon the 3rd accused. But, I find that the said evidence is not sufficient to fasten the liability upon the 3rd accused, who is not a signatory in the cheque, where there is no specific pleadings as to the effect that the 3rd accused was also responsible to the company for the conduct of the business of the company. Mere knowledge of borrowal or issuance of the cheque is not sufficient to fasten the liability upon the 3rd accused, who has been acquitted of by the appellate court. The 3rd accused stands in the same footing as that of the 4th accused. But, the court below went wrong by finding guilt with the 3rd accused, when the 4th accused was found not guilty on the same evidence. In short, no conviction can be entered against the 3rd accused on the basis of the evidence of

D.W.2, where the pleadings in the complaint and the evidence given by the complainant, are not sufficient to fasten the liability upon the 3rd accused. In short, the complainant failed to prove that the revision petitioner/3rd accused is responsible to the company for the business of the conduct of the company.

7. In this analysis, I find that the revision petitioner/3rd accused is not guilty of the said offence alleged against her and she will stand acquitted of the offence under Sec.138 of the N.I. Act.

This revision petition will stand allowed.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge