

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

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

Crl.Rev.Pet.No. 764 of 2007 ()

**AGAINST THE ORDER/JUDGMENT IN CRA 244/2006 of ADDL.SESIONS COURT
(ADHOC)-II, THODUPUZZHA DATED 21-10-2006**

**AGAINST THE ORDER/JUDGMENT IN CC 51/2006 of J.M.F.C.- I, DEVICOLAM DATED 31-
07-2006**

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**SABU C.K. AGED 42 YEARS, S/O.KRISHNAN
CHALIL HOUSE, MULLARINGADU P.O.,
VANNAPPURAM.**

**BY ADVS.SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.RENJITH B.MARAR
SRI.PRABHU VIJAYAKUMAR
SMT.LAKSHMI.N.KAIMAL**

RESPONDENT(S)/COMPLAINANT & STATE:

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

**2. SHIBU MATHEW @ HOME APPLIANCES,
SHIBU S/O PAPPACHAN, SANKARATHIL HOUSE,
RESIDING C/O MUNNAR AUTORIKSHAW CREDIT CARAMEL
BUILDING, G.M.ROAD, MUNNAR P.O.**

**R,R2 BY ADV. SRI.C.S.SUNIL
R,R2 BY ADV. SRI.P.G.JAYASHANKAR
R, BY ADV. PUBLIC PROSECUTOR SRI.JOBY JOSEPH**

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

AD/

K.HARILAL, J

Crl.R.P.No.764 of 2007

Dated this the 26th day of March, 2015

ORDER

This revision petition is filed challenging the concurrent findings of conviction entered and sentence imposed on the revision petitioner in C.C.No.51/2006 on the files of Judicial First Class Magistrate Court, Devikulam and in Crl.Appeal No.244/2006 on the files of Addl.District and Sessions Judge (Adhoc-II), Thodupuzha.

2. It is the case of the complainant that in discharge of previous legally enforceable liability, the accused/revision petitioner issued cheque dated 17.10.2005 drawn on Vannappuram Service Co-operative Bank Ltd., to the complainant and that when the said cheque was presented for collection, it was dishonoured for want of sufficient amount.

3. Per contra, it is the case of the accused/revision petitioner, in defence, is that, he had availed a hire purchase loan of Rs.25,000/- for his Motor cycle bearing No.KL5-N-5312 from Adimali Auto Credit,

and for that purpose, he had executed the hypothecation agreement and had given three blank cheques to the brother of the complainant. One of such cheques was produced by the complainant in this case without knowledge and consent of the accused. In short, the accused had no financial transaction with the complainant.

4. To discharge the initial burden of proving the execution and issuance of the cheque, the complainant was examined as PW1 and Exts.P1 to P6 were marked. After considering the evidence of PW1, the court below observed that the complainant has successfully discharged his initial burden of proof and thereby the presumption under Section 139 and 118(a) of the Negotiable Instruments Act would stand in favour of the complainant.

5. Coming to the rebuttal evidence, the accused had examined as DW1 to DW3 and no documentary evidence had been produced to substantiate the defence plea. DW2 is the complainant's brother to

whom the Ext.P1 disputed cheque had been handed over in connection with his establishment at Admali Auto Credit. When examining in evidence, DW2 denied that he had obtained a blank signed cheque leaves from the accused. DW2 was asked by the accused to produce certain documents. The documents were the R.C. Book of Motor cycle KL.5-N-5312, 3 signed blank cheque leaves given by the accused and the signed blank stamp paper which had been given to DW2. DW2 stated that he did not produce documents because summons was received by him only on the previous day. He stated that Adimali Auto Credit does not obtain blank signed cheque leaves and blank signed stamp paper, while granting hire purchase loans. After analysing the evidence of DW2, the court below observed that it is clear from the evidence on DW2 that no signed cheque leaves and stamp paper were given by the accused to DW2. Moreover, even if, DW2 did not produce the hire purchase agreement and the R.C. Book of Motor cycle, the accused did not insist for production of the same. In short, no documentary

evidence had been brought out in evidence to substantiate the defence contention. In the absence of evidence, and in the light of the oral evidence given by DW2, the court below can be justified in finding that the accused miserably failed to rebut the presumption under Section 118(a) and 139 of the Negotiable Instruments Act, which stood in favour of the complainant. There is no illegality or impropriety in the above finding and I do not find any perversity in the appreciation of evidence.

6. The counsel for the revision petitioner submits that the sentence imposed on the revision petitioner is disproportionate with the gravity and nature of the offence. He further submits that the revision petitioner is willing to pay the compensation as ordered by the court below; but he is unable to raise the said amount forthwith due to paucity of funds. But he is ready to pay the compensation within four months.

7. The Supreme Court, in the decision in **Kaushalya Devi Massand Vs. 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.

8. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, expressing willingness to pay the compensation within four months, the revision petitioner is given four months time to pay the compensation. Consequently, in supersession of the sentence imposed by the courts below concurrently this revision petition is disposed of subject to the following terms:

- i. The revision petitioner shall undergo simple

imprisonment for one day till rising of the court.

ii. He shall pay a compensation of Rs.50,000/- (Rupees fifty thousand only) to the second respondent/complainant, under Section 357(3) of the Cr.P.C., within a period of four months from today.

iii. He shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 27.7.2015 with sufficient proof to show payment of compensation.

iv. In default, He shall undergo simple imprisonment for a period of one month.

The Criminal Revision Petition is disposed of accordingly.

Sd/-
K.HARILAL
JUDGE

VS

/TRUE COPY/

PA TO JUDGE