

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

Crl.Rev.Pet.No. 2131 of 2004 (B)

IN CRA 1023/2003 of ADDITIONAL DISTRICT COURT (ADHOC), ERNAKULAM
DATED 25-06-2004

IN CC 1988/2001 of J.M.F.C.-I,KOCHI DATED 30-10-2003

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

K.P. KURIAKOSE, S/O. PHILIPOSE,
THEKKECHERUVIL HOUSE, VELLAPPARA, P.O. KONNY
PATHANAMTHITTA.

BY ADV. SRI.C.A.MAJEED

RESPONDENT(S)/COMPLAINANT::

- 1. STATE OF KERALA REPRESENTED BY**
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.
- 2. M/S. SHAAN FINANCE PVT.LTD.,**
6TH FLOOR, 611 BASTEN CENTRE, 84
M.G. ROAD, BANGALORE HAVING ITS BRANCH OFFICE THAMPY
BUILDING, M.G. ROAD, ERNAKULAM
REPRESENTED BY
ITS POWER OF ATTORNEY HOLDER MR. M.S. NAIR.

R1 BY ADV. PUBLIC PROSECUTOR SRI.JUSTINE JACOB
R2 BY ADV. SRI.G.HARIHARAN
ADV. SRI.P.A.SIBU RAHIM

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
03-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

VS

K.HARILAL, J

Crl.R.P.No.2131 of 2004

Dated this the 3rd day of July, 2015

ORDER

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.1023/2003 on the files of the court of the Additional Sessions Judge (Ad hoc-I), Ernakulam. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in C.C.No.1988/2001 on the files of the Judicial First Class Magistrate's Court-I, Kochi. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for one day till rising of the court and to pay to the complainant Rs.1,80,000/- as compensation and in default to undergo simple imprisonment for two months.

2. The complainant's case is that the accused owed an amount of Rs.1,80,000/- to the complainant and, in discharge of the said liability, the accused issued a cheque dated 03.03.2001 for an amount of Rs.1,80,000/- to the complainant and when the complainant presented the cheque for encashment, the same was dishonoured for want of sufficient funds. On the other hand, the accused contended that he had a hire purchase transaction with the complainant and in that transaction he had issued four signed blank cheques to the complainant and two cheques among them were misused for prosecuting the accused with a mala fide intention to harass him.

3. It is also contended that in the hire purchase transaction, he had discharged his liability to the complainant and no amount is due from him. To prove the defence case, he examined DW1 one Mr.Gopi and DW2, who is none other than the appellant himself before the court below. But the court below concurrently found that the highly interested testimonies of Dws.1 and 2 are

not sufficient to prove the discharge claimed by him. Ext.D1 receipt and Ext.D2 notices were marked. After considering the defence evidence, the court below concurrently found that the accused miserably failed to prove the discharge of liability by Exts.D1 and D2. Moreover, when the cheque alleged to have been given by the accused to the complainant with date 05.08.1996 and 30.08.1996 were shown to the accused, the same were admitted by him. He admitted in cross examination that on payment of cash, the complainant used to give receipt for the same. He has no case that he had paid the amount of Rs.1,80,000/- covered by Ext.P2.

4. There is no illegality or impropriety in the finding that the accused failed to rebut the presumptions under Sec.139 and 118-A of the Negotiable Instruments Act. I do not find any kind of perversity in the appreciation of evidence.

5. 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.

6. In view of the prepositions laid down by the Apex Court in the above decisions, I find the petitioner can be given three months time to pay the compensation. Hence the Revision Petition is disposed of with 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.1,80,000/- (Rupees One lakh eighty thousand only) to the second respondent/complainant, under Section 357(3) of the

Cr.P.C., within a period of three 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 03.10.2015 with sufficient proof to show payment of compensation.

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

v. If the petitioner had deposited any amount towards compensation, in compliance with the interim order of this Court or the appellate Court, the same shall be given credit to and the balance alone needs to be paid as compensation. In that event, the complainant is allowed to realise such deposits if any.

The Criminal Revision Petition is disposed of accordingly.

Sd/-
K.HARILAL
JUDGE

VS