

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

Crl.Rev.Pet.No. 1337 of 2005

AGAINST THE JUDGMENT IN CRL.A.NO. 125/1999 of ADDITIONAL
DISTRICT & SESSIONS (ADHOC) COURT-I, PATHANAMTHITTA
DATED 01-03-2005.

AGAINST THE JUDGMENT IN CC 435/1997 of CHIEF JUDICIAL
MAGISTRATE'S COURT, PATHANAMTHITTA DATED 8/9/1999.

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

HARIPRASAD, S/O.LATE RAMACHANDRAN NAIR,
PROPRIETOR PICK N WEAR, CHAMAKKALAYIL HOUSE,
CHERUKOLE P.O., PRESENTLY RESIDING AT CHITTANICKAL
VAZHUVELIL, CHERUKOLE P.O.,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.JACOB P.ALEX

RESPONDENT(S)/COMPLAINANTS:

1. VALSAMMA MATHEW, W/O.LATE K.O.MATHEW,
CHUNKAMKUTTIYIL, KADAPRA P.O., KOIPRAM VILLAGE,
KUMBANADU, PATHANAMTHITTA DISTRICT.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.

R1 BY ADV. SRI.V.PHILIP MATHEW

R2 BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 30-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.1337 of 2005-B

Dated this the 30th day of June, 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.125 of 1999 on the files of the Additional District & Sessions Judge, (Ad-hoc-I), Pathanamthitta. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.435 of 1997 on the files of the Chief Judicial Magistrate's Court, Pathanamthitta. According to the

impugned judgment, the Revision Petitioner is sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of ₹1,05,000/- and in default, to undergo rigorous imprisonment for a further period of three months. If the fine amount is realised, a sum of ₹1 lakh will be given to the complainant towards compensation under Sec.357(3) of the Cr.P.C.

2. The complainant's case is that in discharge of debt of ₹1 lakh, the accused had issued Ext.P1 cheque dated 28/2/1997 for that amount. When Ext.P1 cheque was presented for encashment on 3/7/1997, it was returned dishonoured stating that there is no sufficient fund in the account of the accused. Though he caused to issue two lawyer's notices, in two different addresses of the accused, both notices were returned as 'unclaimed' and he has not paid the amount demanded by the notices and thereby, he committed the offence punishable under Sec.138 of the N.I. Act.

3. In the statement under Sec.313 of the Cr.P.C.,

in defence, the accused contended that he had borrowed an amount of ₹50,000/- from the complainant in the year 1995 and subsequently in the year 1996, he had repaid ₹36,000/- towards the principal amount with interest and at that time, he had issued a blank signed cheque for the balance amount of ₹25,000/- due from him. Thus, the actual amount of ₹25,000/- alone was due from him in the above transaction with the complainant. But, by misusing the said signed blank cheque, the complainant himself filled the amount of ₹1 lakh, presented the same for encashment and got returned for want of sufficient fund. In short, the amount claimed under Ext.P1 cheque is not a legally enforceable debt.

4. Though this revision petition has been filed on various grounds, the learned counsel for the revision petitioner mainly canvassed two points. Firstly, according to the petitioner, the statutory notice under Sec.138(b) of the N.I. Act has not been served on him

as required under the above provision. Put it differently, the accused/revision petitioner contends that though he had received Ext.P6 series of notices, two in numbers, both were addressed wrongly. The address shown in those notices is not that of his address. To substantiate the above contention, the Postman was examined as D.W.2.

5. Going by the impugned judgment passed in the appeal, it is seen that the said contention was meticulously considered by the court below. The court below considered the question whether Ext.P6 series, two covers containing the lawyer's notices, were addressed to the petitioner in his correct address and whether they were returned unclaimed after serving of notice by the Postman in accordance with the rules. Admittedly, the complainant, with abundant caution, has sent two lawyer's notices in different addresses. According to him, the accused usually resides in the house shown in both the addresses. Both notices were returned unclaimed. That means, the Postman

tendered the notice or he has given intimation to the accused as regards the arrival of the article; but he was reluctant to receive the same. Needless to say, the law settled by the Apex Court is that notice returned with an endorsement 'unclaimed' also would come under the 'mischief' of the offence under Sec.138 of the N.I. Act. But, it is the case of the accused that both notices were not tendered to him and the court below ought to have disbelieved the Postman. According to him, he is not residing in both the addresses. The address shown in one of the returned notices is none other than the address shown in the Vakkalath and in the Memorandum of Appeal filed by the accused. Thus, the conduct of the accused during the proceedings itself amounts to an admission that one of the notices was issued in his correct address. Therefore, if the address is correct, it could reasonably presumed that the same was tendered to the accused or intimation to that effect was given to the accused; but he was not willing to receive the

same from the Postman. Needless to say, the service of notice was complete and sufficient so as to satisfy the statutory requirements under Sec.138(b) of the N.I. Act. The court below is justified in rejecting the contention that notice has not been served properly to him.

6. Secondly, relying on Ext.D2 receipt, the petitioner contended that Ext.D2 receipt obviously shows that an amount of ₹25,000/- was due to the complainant and for that amount only he has issued a signed blank cheque. Going by Ext.D2 receipt, it is seen that the receipt was issued on 14/1/1996; but Ext.P1 cheque was dated 28/2/1997. More importantly, it is seen that though the accused claimed that the blank signed cheque was issued for ₹25,000/- only, the amount shown in Ext.P1 cheque was ₹1 lakh. Had it been so, as contended by the accused, what prevented him from issuing a filled up cheque for ₹25,000/-? It shows that at the time of issuing blank signed cheque, there was no

understanding or agreement between the complainant and the accused to the effect that the amount that could be encashed by that cheque was ₹25,000/- only. By issuing a blank signed cheque, the accused conveyed an authority to fill up the cheque for the required amount and present the same for encashment, otherwise, he himself would have entered the figure ₹25,000/- in the cheque. In Lillykutty v. Lawrance [2003 (3) KLT 721], this Court held that mere fact that the payee's name and the amount shown in the cheque are not in the handwriting of the drawer does not invalidate the cheque. No law provides that the entire body has to be written by the drawer only in his own handwriting. What is material is the signature of the drawer only and not the body of the instrument. In Moideen v. Johnny [2006 (3) KLT SN 62 Case No.85], this Court held that when a blank cheque is handed over, it means that the signatory has given an implied authority to fill up the blank cheque which he has left.

This proposition was again reiterated in *Vijender Singh v. Eicher Motors Ltd.*, [2012 (1) KLT SN 28 (C.No.31) Del. H.C.]. In the light of the above decisions, I find that the cheque was issued in discharge of a legally enforceable debt of ₹1 lakh as shown in the cheque. There is no illegality or impropriety in any of the findings of the court below.

7. The learned counsel for the Revision Petitioner reiterated the contentions which were raised before the courts below and got rejected concurrently. The learned counsel urged for a re-appreciation of evidence once again, which is not permissible under the revisional jurisdiction unless any kind of perversity is found in the appreciation of evidence. The Revision Petitioner failed to point out any kind of perversity in the appreciation of evidence. The courts below had concurrently found that the complainant/1st respondent had successfully discharged initial burden of proving execution and issuance of the cheque; whereas the Revision Petitioner had failed to rebut the

presumption under Section 118(a) and 139 of the N.I. Act which stood in favour of the 1st respondent. So also, it is found that the debt due to the 1st respondent was a legally enforceable debt and Ext.P1 cheque was duly executed and issued in discharge of the said debt. I do not find any kind of illegality or impropriety in the said findings or perversity in appreciation of evidence, from which the above findings had been arrived. Therefore, I am not inclined to re-appreciate entire evidence once again and I confirm the concurrent findings of conviction.

8. 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. The revision petitioner sought for some time to pay the fine, if the revision petition is found meritless, as he is unable to raise the said amount forthwith due to paucity of funds.

9. Similarly, the substantive sentence imposed on the revision petitioner is too harsh and excessive.

The learned counsel for the revision petitioner prayed for setting aside the sentence of imprisonment also. If the revision petitioner is incarcerated for a period as ordered by the courts below, the entire family will put in great hardship.

10. 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 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.

11. Having regard to the nature and gravity of

the offence, in the light of the decisions quoted above and submissions made at the Bar, I am inclined to grant three months time to pay the fine. Similarly, the substantive sentence of rigorous imprisonment for a period of six months will stand reduced and modified to simple imprisonment for one day till rising of the court. Consequently, in supersession of the sentence imposed by the trial court and confirmed by the appellate court, the revision petitioner will stand sentenced as follows

i. The Revision Petitioner shall undergo simple imprisonment for one day till rising of the court.

ii. The Revision Petitioner shall pay a fine of ₹1,05,000/- (Rupees One lakh five thousand only) within a period of three months from today and the same shall be given to the 1st respondent/complainant as compensation under Sec.357(1)(b) of the Cr.P.C.

iii. The Revision Petitioner shall appear

before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 30/9/2015 with sufficient proof to show payment of compensation.

iv. In default, the Revision Petitioner shall undergo simple imprisonment for a period of two months.

v. If the revision petitioner had deposited any amount towards fine, the said amount shall be given credit to and the balance alone needs to be paid as fine. In that event, the complainant is allowed to realise such deposit, if any.

The Criminal Revision Petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judg