

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

Cr1.Rev.Pet.No. 2369 of 2004

Cr1.A 996/2003 of II ADDL. SESSIONS COURT, ERNAKULAM
DATED 21-06-2004

CC 670/1999 of J.M.F.C.-I, ALUVA DATED 04-11-2003

REVISION PETITIONER(S)/APPELLANT/ACCUSED IN C.C.No.670/99:

SHAJI SEBASTIAN, MANAGING PARTNER,
UNITED ELECTROLINKS, H.M.T. JUNCTION, KALAMASSERY
ERNAKULAM DISTRICT.

BY ADVS.SRI.K.N.CHANDRABABU
SRI.SHAJI CHIRAYATH

RESPONDENTS/RESPONDENTS/COMPLAINANT IN C.C.No.670/99 :

1. OMEGA CABLES LIMITED, OPP.ERNAKULAM
MEDICAL CENTRE, N.H. BYE PASS, PALARIVATTOM P.O.
COCHIN-25, REPRESENTED BY POWER OF ATTORNEY
HOLDER SATHIYENDRANATH, DY.MANAGER, MARKETING
COCHIN BRANCH.

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

R1 BY ADVS. SRI.P.FAZIL
SRI.P.T.ARUNKUMAR
R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 24-06-2015, ALONG WITH CRRP. 2370/2004, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:

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K.HARILAL, J.
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Crl.R.P.Nos.2369 & 2370 of 2004
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Dated this the 24th day of June, 2015

ORDER

These revision petitions are filed challenging the conviction entered and sentence imposed on the revision petitioner in C.C.Nos.669/1999 and 670/1999 on the files of the Judicial First Class Magistrate's court-I, Aluva and confirmed in Criminal Appeal Nos.995/2003 and 996/2003 on the files of the II Additional Sessions Court, Ernakulam. The above complaints were filed by the 1st respondent herein against the revision petitioner alleging offences punishable under Section 138 of the Negotiable Instruments Act.

2. The case of the complainant in both the cases are that the complainant is a manufacturer and distributor of electrical cables and the accused is a customer of the said company. In discharge of the amount due under the

business transaction between the complainant and the accused, the accused issued Ext.P1 cheque dated 28.4.1999 for an amount of ₹1,07,846/- and Ext.P7 cheque dated 11.06.1999 for an amount of ₹67,892/- in favour of the complainant. When the said cheques were presented for encashment, the same were dishonoured for want of sufficient funds and thereby committed the offence punishable under Section 138 of the N.I.Act. The complainant filed C.C.No.669/99 alleging the dishonour of Ext.P1 cheque and C.C.No.670/99 alleging the dishonour of Ext.P7 cheque. In both cases, the accused pleaded not guilty. According to him, there was no legally enforceable liability and he has issued the said Exts.P1 and P7 cheques as signed blank cheques in the course of continuing business transaction as a security only. Hence, the cheques lack consideration also.

3. The power of attorney holder of the complainant company was examined as PW1 and Exts.P1 to P14 were

marked. The accused was examined as DW3 and Exts.D1 to D22 were marked in defence. After considering the evidence on record, the learned Magistrate found the revision petitioner guilty of the said offence and convicted thereunder. In C.C.No.669/99, he was sentenced to undergo simple imprisonment for 10 months and to pay a compensation of ₹1,07,846/- to the complainant under Section 357(3) Cr.P.C and in default, to undergo simple imprisonment for 10 months. In C.C.No.670/99, the accused is sentenced to undergo simple imprisonment for six months and to pay ₹67,892/- as compensation under Section 357(3) Cr.P.C and in default, to undergo simple imprisonment for nine months.

4. Feeling aggrieved, though the petitioner had preferred above criminal appeals, after re-appreciating the evidence on record, the learned Additional Sessions Judge also concurred with the verdict of guilt and modified the substantive sentence of simple imprisonment to simple

imprisonment for three months in C.C.No.669/99 and simple imprisonment for one day till rising of the court in C.C.No.670/99. But, sustained the compensation and default sentence as such without any interference. The legality and propriety of the concurrent findings of conviction and sentence are under challenge in these revision petitions.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

6. Though these revision petitions have been filed challenging the concurrent findings of conviction and sentence on various grounds, the learned counsel for the petitioner mainly canvassed the point that the complaint itself is not maintainable, in view of the decision of the Apex Court in **Aneeta Hada v. Godfather Travels & Tours Pvt. Ltd. & Another** [2012 (2) KLT 736 (SC)] followed by this Court in **Aneeta Hada v. Godfather Travels & Tours Pvt. Ltd. & Another** [2012 KHC 4244].

7. The sum and substance of the argument is that the Managing Director or other person or functionaries working in different categories of the company, who are responsible to the company for the conduct of the business of the company, is not maintainable unless the company is made an accused in the complaint as the prosecution against the company is imperative. In the instant case, Exts.P1 and P7 cheques are drawn on the account maintained by the partnership firm and the accused/Managing Partner of the company had signed the cheque for and on behalf of the firm. In short, the partnership firm by name 'United Electrolinks' is the drawer of the cheque provided under Section 138 of the N.I.Act.

8. Per contra, the learned counsel for the 1st respondent submits that in the instant case, the cheque is signed by the Managing partner of the partnership firm only and the decision is not applicable to the instant case as the accused in the instant case is a partnership firm only, and

not a company.

9. In view of the submissions at the Bar, the short question that arises for consideration is, whether the complaint is maintainable when the partnership firm was not made an accused in the proceedings under Section 138 of the N.I.Act.

10. Let us examine the decision laid down by the Apex Court in **Aneeta Hada & Others v. Godfather Travels & Tours Pvt. Ltd. & Another** [2012 KHC 4244]. Going by the above decision, it could be seen that on a reference, a three Judge Bench of the Apex Court considered the question whether the Managing Partner of the company alone can be prosecuted on a complaint under Section 138 of the N.I.Act unless the company is made an accused. After overruling the earlier decision, the Apex Court held that the complaint under Section 138 of the N.I.Act against the Managing partner or other persons or functionaries working in different categories of company, who are

responsible to the company for the conduct of the business is not maintainable unless the company is made an accused in the complaint as prosecution against the company is imperative.

11. Going by Exts.P1 and P7 cheques, it is seen that the cheques had been drawn by the company on the account maintained by the partnership firm in the Lord Krishna Bank Ltd. and the cheques had been signed by the Managing Partner for and on behalf of the partnership firm by name 'United Electrolinks'. Admittedly, the partnership firm is not made a party in the complaint. It can be safely concluded that the complaint is not maintainable in view of the decisions referred above. The learned counsel for the respondent submitted that, in the instant case, the cheques are issued by the partnership firm and thereby it will not come under the above decision. But going by Explanation to Section 141 (2);

(a) a Company means any body corporate and includes

a firm or other association of individuals; and

(b) a “Director” in relation to a firm means a partner in the firm.

In view of the Explanation, the argument advanced by the learned counsel for the respondent stands rejected and I find that the impugned judgments are vitiated by illegality and impropriety. Therefore, the conviction and the sentence against the accused under the impugned judgments are set aside and the revision petitioner is acquitted of the offence under Section 138 of the N.I. Act.

These criminal revision petitions are allowed.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge