

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

CRL.REV.PET.NO. 1309 OF 2009 ()

**CRL.A 151/2004 OF ADDL.SESIONS COURT (ADHOC)-II, THALASSERY
CC 3222/2003 OF ADDL.C.J.M.COURT, THALASSERY**
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REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**T.ABDUL KADER, S/O.ABDULLA,
AGED 45 YEARS, "SULFATH", POST-PERINGADY,
NEW MAHE, THALASSERY.**

**BY ADVS.SRI.C.KHALID
SRI.N.GOPINATHA PANICKER**

RESPONDENT(S)/COMPLAINANT & STATE:

**1. DR.M.K.ABDUL AZEEZ,
S/O.MOHAMMEDKUTTY, AGED 63 YEARS, HOMEOPATH,
"PRASANTHI", KIZHUNNA, EDAKKAD,
KANNUR DISTRICT.**

**2. STATE OF KERALA,
REPBY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.**

**R2 BY PUBLIC PROSECUTOR SMT.M. MADHU BEN
R1 BY ADV. SRI.R.SURENDRAN**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
11-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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K.HARILAL, J.

Crl.R.P. No.1309 of 2009

Dated this the 11th day of March, 2015.

O R D E R

1. The revision petitioner is the accused in S.T.C.No.3222 of 2003 on the files of the Additional Chief Judicial Magistrate's Court, Thalassery as well as the appellant in Crl.A. No.151 of 2004 on the files of the Sessions Court, Thalassery. He was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act'). After considering the evidence on record, the learned Magistrate found the revision petitioner guilty of the said offence and convicted thereunder. He was sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.2,60,000/- and in default to undergo simple imprisonment for three months. Out of the fine amount, if realised, Rs.2,58,000/- was ordered to be paid to the complainant/2nd respondent as compensation under Section 357(1)(b) of the Cr.P.C. Though he had preferred the above criminal appeal, the Appellate Court also after re-appreciating the evidence on record confirmed the findings of conviction as such, but reduced the quantum of compensation to

Rs.2,50,000/- and the rest of the sentence was sustained as such without any interference. This petition is filed challenging the legality and propriety of the concurrent findings of conviction and the modified sentence imposed by the Appellate Court.

2.It is the case of the 2nd respondent that the accused had borrowed an amount of Rs.2,50,000/- from him and in discharge of that liability he issued a cheque dated 30.11.2002 for an amount of Rs.2,50,000/- in his favour and when the 2nd respondent presented the cheque for encashment, the same was dishonoured for want of sufficient funds; whereas the case attempted to be made out by the revision petitioner in defence is that he lost a cheque leaf and the same was happened to be manipulated and pressed into service by the complainant and caused to be made on the basis of the instant case.

3.In this revision petition, the revision petitioner contended that though the petitioner had denied the signature in the cheque, he had not been given an opportunity to prove the same by resorting to expert opinion as regards the genuineness of the signature. This is the point raised in this revision petition.

4. Going by the impugned judgment under challenge, it is seen that the Appellate Court had considered the said contention in detail. After examining the admitted signatures of the petitioner found in the documents produced by P.W.2 the Bank Manager, the Appellate Court observed that on a comparison of Ext.P1 cheque, Ext.P6 account opening form and Ext.P5 acknowledgment card along with the admitted signatures of the accused, the signatures of the accused appearing in the admitted records are totally different in its frame and manner exposing that he had no consistent or definite signature anywhere at any time. Thus, after comparing the admitted signatures with the signature in Ext.P1 the Appellate Court concurred with the findings of the trial court that the petitioner has no consistent signature and in the absence of a consistent signature no purpose would be served by sending the signatures for expert opinion.

5. More over, the Appellate Court observed that a close perusal of the documents produced in the given case clearly shows that the signatures appearing in Ext.P1 cheque and Ext.P5 postal acknowledgment are exactly identical. The accused admitted

due receipt of the statutory notice. It follows that the signature shown in Ext.P5 is that of the accused alone. When the signatures shown in Exts.P1 and P5 are identical, there is no need for making a further comparison, particularly when all other admitted signatures appearing in the case records are totally different and distinct in its frame and manner. Therefore, in this analysis, I do not find any kind of perversity in the appreciation of evidence. So also, there is no illegality or impropriety in any of the findings in the impugned judgment. Consequently, the conviction entered against the revision petitioner under Section 138 of the N.I. Act by the trial court and confirmed by the Appellate Court will stand upheld.

6. Coming to sentence, the learned counsel for the revision petitioner submits that the substantive sentence imposed on the revision petitioner is excessive, harsh and disproportionate with the nature and gravity of the offence under Section 138 of the N.I. Act.

7. 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 v. 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. In view of the above decisions of the Apex Court, I am of the opinion that the sentence imposed on the revision petitioner is a little excessive, harsh and disproportionate with the nature and gravity of the offence punishable under Section 138 of the N.I. Act.

9. Consequently, in view of the sentence imposed on the revision petitioner by the trial court and confirmed and modified 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. He shall pay a compensation of Rs.2,50,000/- (Rupees two lakhs fifty thousand only) to the 2nd respondent/complainant, under Section 357(3) of the Cr.P.C., within a period of two months from today. If he had deposited any amount towards compensation, the same shall be given credit to and the balance alone need be paid as compensation. In that event, the amount in deposit shall be given to the complainant/2nd respondent.
- iii. He shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 11.5.2015 with sufficient proof to show payment of compensation.
- iv. In default, he shall undergo simple imprisonment for a period of three months.

The Criminal Revision Petition is disposed of accordingly.

Sd/—
(K.HARILAL, JUDGE)

okb.