

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.1727 of 2007 ()

**AGAINST THE JUDGMENT IN CRL.A.NO. 120/2002 of ADDL.SESIONS COURT
(ADHOC)-II, THALASSERY DATED 17-01-2007**

**AGAINST THE JUDGMENT IN CC 966/2001 of ADDL.C.J.M.COURT,THALASSERY
DATED 10-01-2002**

REVISION PETITIONER(S)/APPELLANT/ACCUSED :

**E.K.HARIDASAN, S/O KUNHIRAMAN NAMBIAR,
AGED 47 YEARS, EDAKKALAVAN KOROTH HOUSE, VILAMANA
IRITTY P.O., MADATHIL VIA, KANNUR DISTRICT.**

**BY ADVS.SRI.V.A.SATHEESH
SRI.V.JOHN SEBASTIAN RALPH**

RESPONDENT(S)/RESPONDENTS/COMPLAINANT :

**1. K.RAMESHAN, PUNNATTU, KEEZHUR P.O.,
IRITTY, KANNUR DISTRICT.**

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

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:**

VS

K.HARILAL, J

Crl.R.P.No.1727 of 2007

Dated this the 26th day of March, 2015

ORDER

The petitioner is the accused in C.C.No.966/2001 on the files of Addl.Chief Judicial Magistrate Court, Thalassery, as well as the appellant in Crl.Appeal.No.120/2002 on the files of Court of Sessions, Thalassery. He was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter called 'the N.I. Act' for short) on a complaint filed by the first respondent herein. After trial, the learned Magistrate found the revision petitioner guilty of the said offence and convicted him thereunder. He was sentenced to undergo simple imprisonment for one year under Section 138 of the N.I. Act. In appeal, the learned Sessions Judge also reappreciate the evidence on record and concurred with the verdict of guilty under Section 138 of the N.I. Act, but modified the sentence. The substantiate sentence of simple imprisonment for one year was reduced and modified to simple imprisonment of one day

till rising of the court and to pay a compensation of Rs.1 Lakh to the complainant, under Section 357(3) of Code of Criminal Procedure and in default, to undergo simple imprisonment for three months. The legality and propriety of the findings whereby the court below entered the verdict of guilty is under challenge in this revision petition.

2. The case of the first respondent is that, the revision petitioner borrowed a sum of Rs.1 lakh from him for settling a case in connection with the bus belonging to the revision petitioner and in discharge of that liability, the revision petitioner had drawn Ext.P1 cheque and issued to the first respondent. When the said cheque was presented for encashment, the same was dishonoured and returned for want of sufficient funds.

3. When the revision petitioner was questioned under Section 313 of the Code of Criminal Procedure, he pleaded not guilty and in defence, he contended that, he is having no dealings with the first respondent and he has not given any cheque to him. He is a permanent resident of Ernakulam district and first respondent has not sent

notice in his correct address.

4. To discharge the initial burden of proving the execution and issuance of the cheque, the first respondent was examined as PW1 and Exts.P1 to P8 were produced to prove the statutory compliance under Section 138(b) of the N.I. Act and the dishonour of the cheque for want of sufficient funds. After analyzing the evidence of PW1, the trial court held that, he has deposed in terms with the averments in the complaint and though he was cross examined in detail, at length, nothing brought out to discredit his evidence and the presumption under Section 118 A and 139 of the N.I. Act would stand in favour of the first respondent. Coming to the rebuttal evidence, no evidence had been adduced by the revision petitioner to substantiate his contentions put forward in defence. After analyzing the evidence adduced by both parties, the trial court found that the revision petitioner failed to rebut the presumption under Section 118 A and 139 of the N.I. Act, in the absence of evidence. On an analysis of the evidence on record, in view of the above said finding, I am of the

opinion that, though the petitioner had put forward a definite contention denying the execution and issuance of the cheque, it was for him to adduce evidence in support of the said contention to the extent of preponderance of probability. No doubt, preponderance of probability of the defence version can be brought out by cross examining the first respondent. But, in the instant case, the court below observed that, the revision petitioner has failed to produce anything in support of his contention, during the cross examination. I do not find any kind of perversity in the appreciation of evidence and there is no illegality or impropriety in the appreciation of evidence.

5. Though this revision petition has been filed on various grounds. The learned counsel for the revision petitioner mainly focused on the point that, no notice had been served to the revision petitioner as provided under Section 138(b) of the N.I. Act. The learned counsel further submits that, though, the notice was addressed to Armed Reserve Police Camp, Kannur, during the relevant time he was on deputation to different places. Even though, the

notice was redirected to Wild Life Forest Range Office, Aralam, the same was not served to him in that address. It is also contended that, the burden of proof is on the first respondent that the notice had been properly served as provided under Section 138(b) of the N.I. Act. Going by the impugned judgment, it is seen that the notice was sent to Armed Reserve Police Camp, Kannur, the office to which he is permanently attached. It is pertinent to note that the revision petitioner has no case that he was not working under or attached to Armed Reserve Police Camp, Kannur, at the relevant time. But, it is the case of that, from the Police Camp he was on deputation to different places. It is also pertinent to note that the revision petitioner has no case that, he was not deputed to Wild Life Forest Range Office, Aralam, during that time. On a perusal of the returned envelope, it could be seen that as contended by the first respondent, the envelope was addressed to Armed Reserve Police Camp, Kannur and thereafter the Postal Authority themselves, on an information from the Armed Reserve Police Camp, Kannur

redirected the said letter to Wild Life Forest Range Office, Aralam, the place where he was working on deputation at that time. Thus the revision petitioner has no case that the address in which the first respondent sent notice is false. As rightly held by the court below, when a person having a permanent employment under an establishment situated in a particular place, it is proper for the sender to send letter in that address. It follows that, when a person having a permanent employment is temporarily deputed for some other duty, it is for him to make necessary arrangements for the receipt of the postal articles coming in his parent office. Here, admittedly, the revision petitioner has not made any such arrangements and that was a reason why the notice was issued to him was directed to the place, where he was working on deputation. At this juncture, the presumption under Section 27 of the General Clauses Act, also come in favour of the first respondent. According to the said section, if a postal article is addressed properly in the correct address the presumption is that, it can be deemed to have been

served on the addressee unless he proves that it was not really served. Further, in **Bhaskaran v. Balan** [1999 (3) KLT 440], the apex court while interpreting the meaning of service of notice by post relying on Section 27 of the General Clause Act held that “where a sender has dispatched the notice by post with correct address written on it, which is acknowledged by the receiver, then it can be deemed to have been served on the receiver unless he proves that it was not really served and he was not responsible for such non service”. When applying the said proposition in the instant case, it cannot be held that even if the notice was not served on him, he was not responsible for such non service.

6. In view of the above decision, I am inclined to reject the contention raised by the learned counsel for the revision petitioner and I do so. Consequently, conviction under Section 138 of the N.I. Act would stand confirmed.

7. Coming to sentence, it is seen that the court below has rightly imposed sentence in accordance with

the nature and gravity of the offence under Section 138 of the N.I. Act. But the learned counsel for the revision petitioner submits that, he is unable to raise the required amount to pay compensation immediately and he wants some more time to pay the compensation. The learned counsel urged for 8 months time to pay the compensation. But I am not inclined to grant 8 months time to pay the compensation.

8. Having regard to the facts and circumstances of the case, the petitioner is given 3 months time to pay the compensation. Consequently, in supersession of the sentence imposed by the trial court and modified by the appellate court, the 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.1,00,000/- (Rupees one lakh only) to the respondent, under Section 357(3) of the Cr.P.C., within a period of 3 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 26.6.2015 with sufficient proof to show payment of compensation.

iv. In default, He shall undergo simple imprisonment for a period of 3 months.

v. If the petitioner had deposited any amount towards compensation, in compliance with the interim order, the said amount shall be given credit to and the balance amount needs to be paid as compensation. In that event, the complainant is allowed to release the said amount from the court.

The Criminal Revision Petition is disposed of accordingly.

Sd/-
K.HARILAL
JUDGE

VS

/TRUE COPY/

PA TO JUDGE