

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

Crl.Rev.Pet.No. 2276 of 2005

AGAINST THE JUDGMENT IN CRL.A.NO. 815/2003 of ADDITIONAL
SESSIONS COURT (ADHOC)-II, ERNAKULAM DATED 30-05-2005

AGAINST THE JUDGMENT IN CC 615/1999 of J.M.F.C.-I
MUVATUPUZHA DATED 31-07-2003

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

JIJI MATHEW, AGED 48 YEARS,
S/O. MATHEW, PITTAPPILLIL ENGINEERING,
SAKTHI BUILDING,
COMBINE M.C. ROAD, VAZHAPPILLY.

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENT(S)/STATE & COMPLAINANT:

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

2. M/S. LAKSHMI FINANCE, VELLORKUNNAM,
MARKET P.O., MUVATTUPUZHA, REP. BY ITS
MANAGING PARTNER, N. RAVEENDRAN NAIR,
PRAJEETHA BHAVAN,
MUVATTUPUZHA.

R1 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

R2 BY ADV. SRI.P.V.ELIAS

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 18-08-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.2276 of 2005

Dated this the 18th day of August, 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.815 of 2003 on the files of the Additional Sessions Judge (Ad hoc-II), 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.615 of 1999 on the files of the Judicial First Class Magistrate's Court, Muvattupuzha. According to the impugned judgment,

the Revision Petitioner is sentenced to undergo simple imprisonment for one year and also to pay a fine of ₹5,000/-, in default of payment of fine, to undergo simple imprisonment for three months more. If the fine amount is realised from the accused, it will be given to P.W.1 as compensation under Sec.357 of the Cr.P.C.

2. The complainant is a firm having business of financing. The case of the complainant is that a sum of ₹1 lakh was due from the accused to the complainant in a loan transaction and in discharge of the said liability, the accused had drawn and issued Ext.P2 cheque for the said amount and when the complainant presented the cheque for encashment, the same was dishonoured and returned for want of sufficient funds. In spite of the receipt of lawyer's notice demanding the cheque amount, the accused did not pay the cheque amount; nor did he send a reply denying the liability and thereby, the accused

has committed the offence punishable under Sec.138 of the N.I. Act.

3. To discharge the initial burden, the Managing Partner of the complainant/firm was examined as P.W.1 and Exts.P1 to P11 were marked. Ext.P9 is the copy of account ledger of the complainant/firm and Exts.P10 and P11 are copies of journal and loan register maintained by the complainant/firm during the relevant period in question. After considering the aforesaid evidence, the courts below concurrently found that the complainant had successfully discharged the initial burden to prove the execution and issuance of the cheque and thereby the presumptions under Secs.139 and 118(a) of the N.I. Act would stand in favour of the complainant. I do not find any reason to interfere with the said findings in the absence of any kind of perversity in the appreciation of aforesaid evidence.

4. What remains to be considered is whether the

accused had succeeded in rebutting the presumptions which stood in favour of the complainant. No positive evidence, either oral or documentary, was forthcoming to rebut the presumptions. But, the defence version, while cross-examining P.W.1, is that the accused had availed a loan of ₹1 lakh from the complainant and he had issued two signed blank cheques at the time of availing the loan amount. It is further alleged that the property having an extent of 30 cents belonging to him was registered in the name of P.W.1, as security, and subsequently, for repayment of the loan amount availed by him, the property already registered in favour of P.W.1 was mortgaged with the Urban Co-operative Bank, Muvattupuzha, and a sum of ₹2 lakhs was availed from the said bank and he had repaid the amount covered by the said loan transaction. When the questions suggesting the above defence was put to P.W.1, he admitted the registration of the mortgage regarding 30 cents; but he further

maintained a stand that the transaction relating to 30 cents had no co-relation with the transaction of the complainant/firm and the document was registered with reference to a sum of 2,20,000/- borrowed by the accused. Virtually, the accused failed to connect the mortgage of 30 cents with the present transaction in discharge of which Ext.P2 cheque was issued.

5. More importantly, the accused has not tendered a reply notice to Ext.P4 lawyer's notice demanding the cheque amount. Had the defence version been a true and bona fide one, certainly, he would have sent a reply to Ext.P4 lawyer's notice suggesting the defence contention raised belatedly during the course of trial. The failure to send reply notice can be taken as a strong circumstance to doubt the genuineness and reliability of the defence version. Thus, the accused has miserably failed to rebut the presumptions which stood in favour of the complainant. There is no illegality or impropriety in

any of the findings in the impugned judgment and I do not find any perversity in the appreciation of evidence from which those findings have arrived at.

6. 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 or illegality or impropriety in the findings whereby the trial court convicted him.

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 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.

8. In the light of the above decisions and the nature and gravity of the offence under Sec.138 of the N.I. Act, the substantive sentence of simple imprisonment for one year will stand reduced and modified to simple imprisonment for one day till rising of the court and and the petitioner is given four months time to pay the compensation. 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 ₹1,00,000/- (Rupees one lakh only) to the 2nd respondent/complainant as compensation within a period of four months from today under Sec.357(3) 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 18/12/2015 with sufficient proof to show payment of compensation.

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

v. If he had deposited any amount in the trial court towards compensation or fine, the same shall be given credit to and the balance alone needs to be paid as

compensation or fine, as the case may be, and in that event, the complainant is allowed to realise such deposit from the court.

The Criminal Revision Petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge