

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. 2034 of 2007 ()

**AGAINST THE ORDER/JUDGMENT IN CRA 414/2006 of ADDL.DISTRICT COURT
(ADHOC)-II, ALAPPUZHA DATED 24-02-2007**

**AGAINST THE ORDER/JUDGMENT IN CC 193/2002 of J.M.F.C.-I, CHERTHALA DATED
10-08-2006**

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**ANIL RAVINDRAN, S/O.RAVEENDRANATHAN,
AGED 44 YEARS, SANKARAM, CMC-16
CHERTHALA.**

BY ADV. SMT.PREETHA.V.K.

RESPONDENT(S)/RESPONDENT/COMPLAINANT & STATE:

**1. N. VENUGOPAL, S/O NARAYANA PILLAI,
CHAMPADOTHU, PATTANAKKAD P.O, UZHUVA,
CHERTHALA.**

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

**R,R1 BY ADV. SRI.R.BINDU (SASTHAMANGALAM)
R,R1 BY ADV. SMT.PREETHA V.K
R, BY ADV. 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:**

AD/

K.HARILAL, J

Crl.R.P.No.2034 of 2007

Dated this the 26th day of March, 2015

ORDER

The revision petitioner is the accused in C.C.No.193/2002 on the files of the Judicial First Class Magistrate Court-I, Cherthala as well as appellant in Crl.Appeal No. 414/2006 on the files of Addl.Sessions Judge (Fast Track) Court-II, Alappuzha.

2. It is the case of the complainant that the accused and complainant are friends and on 15.1.2002, the accused borrowed Rs.40,000/- from the complainant and issued a cheque in discharge of that liability. When the cheque was presented for encashment, the same is dishonoured and returned for want of sufficient funds in the account.

3. Per contra, in defence, the accused pleaded not guilty and contended that, Ext.P1 cheque was received by the complainant from the accused as a mediator in a money transaction between one Ramesan and the accused. But, when he came to know that the

complainant has filed a case against the said Ramesan, in court, for releasing the amount due from Ramesan, he met the complainant and demanded back Ext.P1 cheque. At that time, he told him that the cheque was lost from him and he had issued the letter for the same. Subsequently, the complainant has filed the case against him by making use of that cheque. In short, there was no money transaction between the complainant and the accused.

4. To discharge the initial burden of proving the execution of the cheque, the complainant was examined as PW1 and Exts.P1 to P6 were marked. After analyzing the evidence of PW1, the court below observed that, nothing has been brought out to discredit the evidence of PW1 and the complainant has successfully discharged the initial burden of proof and thereby the presumption under Section 118(a) and 139 of the Negotiable Instruments Act would stand in favour of the complainant.

5. Coming to the evidence adduced in defence, the post man who served the lawyers notice was examined as DW1 and another witness was examined as DW2 to speak about the transaction between the

Ramesan and the complainant. After analyzing the evidence of DW2, the court below observed that the evidence of DW2 shows that, he is not a trustworthy witness and his evidence is not at all credible to find that Ext.D2 was executed by the complainant in favour of the accused. Moreover, PW1 also denied the execution of Ext.D2 as claimed by the accused. That apart, the accused was also not a signatory in Ext.D2 agreement. In short, no reliance can be placed on Ext.D2 agreement. More importantly, the said Ramesan with whom the complainant had a transaction, has not been examined as a witness to prove the defence version advanced by the accused. In view of the defence contention indisputably, the said Ramesan is a material witness, who ought to have been examined to substantiate the contention of the accused. Thus, in the absence of evidence to support the defence contention, I cannot find fault with the findings of the court below that the accused miserably failed to rebut the presumption under Section 118(a) and 139 of the Negotiable Instruments Act, which stood in favour of the complainant.

6. Coming to the sentence in this revision

petition, it is contended 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 Negotiable Instruments 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 decision, I am of the view that the sentence imposed on the revision petitioner is a little excessive and disproportionate with the nature and gravity of the offence. 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. He shall pay a compensation of Rs.40,000/- (Rupees forty thousand only) to the first respondent/complainant, under Section 357(3) of the Cr.P.C., within a period of two 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 two months.

The Criminal Revision Petition is disposed of accordingly.

Sd/-
K.HARILAL
JUDGE

VS