

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

Crl.Rev.Pet.No. 2354 of 2005 (D1)

AGAINST THE JUDGMENT IN CRL.A 455/2003 of SESSIONS COURT,
PATHANAMTHITTA DATED 30-06-2005

AGAINST THE JUDGMENT IN CC 25/2002 of C.J.M.COURT,
PATHANAMTHITTA DATED 21-11-2003

REVISION PETITIONER(S)/APPELLANT/ACCUSED.:

SAJEEV RAVI, S/O.RAVEENDRAN,
MULLANAKUZHAY, VALLICODE P.O. PATHANAMTHITTA.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE.:

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

2. YASHODHARA PANICKER, S/O.NARAYANAN,
MARUTHOOR HOUSE, VALLICODE MURI, PATHANAMTHITTA.

R2 BY ADV. SRI.SIBY MATHEW

R2 BY ADV. SRI.PHILIP J.VETTICKATTU

R1 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 07-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Crl.R.P. No.2354 of 2005

Dated this the 7th day of July, 2015.

O R D E R

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.455/2003 on the files of the court of the Sessions Judge, Pathanamthitta. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in C.C.No.25/2002 on the files of the Chief Judicial Magistrate's Court, Pathanamthitta. According to the impugned judgment, the revision petitioner was sentenced to pay a fine of Rs.1,50,000/- and in default, to undergo simple imprisonment for 30 days. The fine amount, on recovery, should be paid to the complainant as compensation under Section 357(1) of the Cr.P.C.

2. The complainant's case is that the accused, in discharge of a liability, issued a cheque in her favour and when the cheque was presented for encashment, it got dishonoured for want of sufficient funds. According to the complainant, the original amount due from the accused was Rs.3,50,000/- and out of that amount, he repaid Rs.1,00,000/- in cash and for the balance amount he issued two cheques for Rs.1,00,000/- and Rs.1,50,000/- and Ext.Pl is one of those two cheques. Though the complainant caused to issue a lawyer notice, the accused neither paid the said amount nor sent a reply notice denying the said liability. Thus, the accused committed the offence under Section 138 of the N.I. Act. In defence, the accused contended that the cheque in question was the one given to the son of the complainant in connection with the chitty transaction. Except the said old suggestion, nothing was brought out to disbelieve the evidence of P.W.1. The said defence is not at all substantiated by any acceptable evidence. More importantly, even though a notice was issued and the

same was accepted by the accused, he did not send a reply either denying the liability or suggesting the way through which the cheque happened to be in the possession of the complainant. The court below rightly found that the accused has miserably failed to rebut the presumption under Sections 118(a) and 139 of the N.I. Act. I do not find any kind of perversity in the appreciation of evidence.

3. The courts below had concurrently found that the complainant/2nd respondent had successfully discharged the initial burden of proving execution and issuance of the cheque; whereas the revision petitioner had failed to rebut the presumption under Section 118(a) and 139 of the N.I. Act which stood in favour of the 2nd respondent. So also, it is found that the debt due to the 2nd respondent was a legally enforceable debt and Ext.Pl cheque was duly executed and issued in discharge of the said debt.

4. This Court is satisfied that the courts below had meticulously evaluated the evidence on record. I do not find any kind of illegality or impropriety in the

said findings or perversity in the appreciation of evidence, from which the above findings had been arrived at. Therefore, I am not inclined to re-appreciate entire evidence once again and I confirm the concurrent findings of conviction.

5. At last, the learned counsel for the revision petitioner submits that the sentence imposed on the revision petitioner is disproportionate with the gravity and nature of the offence contemplated under Section 138 of the N.I. Act. The learned counsel further sought for some time to pay the fine as he is unable to raise the said amount forthwith due to paucity of funds, if this revision petition is found liable to be dismissed.

6. 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.

7. Having regard to the nature and gravity of the offence and in the light of the decisions quoted above, the revision petitioner is given three months time to pay the fine. Consequently, this revision petition will stand disposed of subject to the following terms:

- i. The revision petitioner shall pay a fine of Rs.1,50,000/- (Rupees One lakh and fifty thousand only) within a period of three months from today and the same shall be given to the 2nd respondent/complainant under Section 357(1)(b) of the Cr.P.C.
- ii. In default, he shall undergo simple imprisonment for a period of 30 days.

The Criminal revision petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.