

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. 2358 of 2005 (D2)

AGAINST THE JUDGMENT IN CRL.A 154/2005 of SESSIONS COURT,
ERNAKULAM DATED 08-07-2005

AGAINST THE /JUDGMENT IN CC 851/2000 of J.F.C.M.COURT,
PERUMBAVOOR DATED 30-12-2004

REVISION PETITIONER(S)/APPELLANT/ACCUSED.:

PAPPACHAN, S/O.KORATH,
EDASSERY HOUSE, NAYATHODU, ERNAKULAM DISTRICT.

BY ADV. SRI.K.T.SHYAMKUMAR

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

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

2. M/S.THEJUS OIL PVT.LTD., AIMURY,
PERUMBAVOOR, REPRESENTED BY ITS CASHIER, N.MANMADHAN,
PADATHU HOUSE, AIMURY, PERUMBAVOOR.

R1 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB
R2 BY ADV. SRI.WILSON URMESE

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.2358 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.154/2005 on the files of the court of the Sessions Judge, 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.851/2000 on the files of the Judicial First Class Magistrate's Court, Perumbavoor. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for one day till the rising of the court and to pay a compensation of Rs.80,000/- to the

complainant under Section 357(3) of the Code of Criminal Procedure and in default to undergo simple imprisonment for three months.

2. The complainant's case is that the accused had owed an amount of Rs.66,762.50/- to him on account of oil purchase and in discharge of the said liability the accused issued Ext.P1 cheque dated 29.12.1999 for the said amount in his favour. When the cheque was presented for encashment, it got dishonoured for want of sufficient funds. Though he caused to issue a lawyer notice, the same was returned as 'refused' and no amount was paid by the accused. In defence, during cross-examination under Section 313 of the Cr.P.C., the accused filed a statement in writing that he had personal money dealings with one Mohanan and he had issued a signed blank cheque to the said Mohanan and the complainant somehow procured the said cheque from Mohanan and misused the same for prosecuting the accused unnecessarily. But during the cross-examination of P.W.1, he had no case that Ext.P1 cheque was given as signed and blank. To substantiate the

contention raised in defence, the said Mohanan was examined as D.W.1. After analysing the evidence of D.W.1, the court below observed that the evidence of D.W.1 is not reliable. Though D.W.2 was also examined, to prove the handwriting in the cheque, he would say that the handwriting in Ext.P1 is that of one Rajan. But he had not seen of writing it. But P.W.1 had stated that it was written by the accused in his presence. In the above context, the accused ought to have taken steps either to examine the said Rajan or to send the cheque for expert opinion so as to disprove the claim of the complainant that the handwriting in the cheque is that of the accused. Thus, the accused has miserably failed to rebut the presumption under Sections 118(a) and 139 of the N.I. Act., which stood in favour of the complainant. There is no illegality or impropriety in the judgment under challenge.

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 compensation 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 compensation. Consequently, this revision petition will stand disposed of subject to the

following terms:

- i. The revision petitioner shall undergo simple imprisonment for one day till rising of the court.
- ii. He shall pay a compensation of Rs.80,000/- (Rupees Eighty thousand only) to the 2nd respondent/complainant under Section 357(3) of the Cr.P.C. within a period of three 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 7.10.2015 with sufficient proof to show payment of compensation.
- iv. In default, he shall undergo simple imprisonment for a period of three months.
- v. If the revision petitioner had deposited any amount in the trial court, in compliance with the direction of this Court or appellate court, that amount shall be given credit to and the balance alone need be paid as compensation. In that event, the 2nd respondent/complainant is allowed to realise such deposit, if any.

The Criminal revision petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.