

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. 2157 of 2007 ()

**CRL.A 544/2005 of I ADDL. SESSIONS COURT, THRISSUR
CC 679/2004 of J.F.C.M. COURT, KODUNGALLUR**

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REVISION PETITIONER(S)/APPELLANT /ACCUSED::

**SUDHA, W/O. MOHANAN, MANALIKATTIL HOUSE,
PULLUT, NARAYANAMANGALAM, THRISSUR DISTRICT.**

BY ADV. SRI.VARGHESE MYLOTH

RESPONDENT(S)/ RESPONDENT/COMPLAINANT::

- 1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. SUDHAKARAN, S/O.SANKARAN,
KUMBALATH HOUSE, PUTHENCHIRA, KOVILAKATHKUNNU.**

**R1 BY PUBLIC PROSECUTOR SRI. JOBY JOSEPH
R2 BY ADV. SRI.M.H.HANIL KUMAR
R2 BY ADV. SRI.M.R.SUNIL KUMAR**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
26-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

OKB

K.HARILAL, J.

Cr1.R.P. No.2157 of 2007

Dated this the 26th day of March, 2015.

O R D E R

1. The revision petitioner is the accused in C.C. No.679/2004 of the Judicial First Class Magistrate's Court, Irinjalakkuda as well as appellant in Cr1.A. No.544/2005 on the files of the Sessions Court, Thrissur. The concurrent findings of conviction under Section 138 of the Negotiable Instruments Act and modified sentence imposed by the appellate court are under challenge in this revision petition. It is the case of the complainant that the accused owed a sum of Rs.1 lakh to the complainant and in discharge of the said liability the accused had drawn and issued a cheque dated 4.5.2004 for the said amount to the complainant. When the said cheque was presented for encashment, the same was dishonoured and returned for want of sufficient funds.
2. Per contra, in defence, the accused pleaded that there was no transaction as alleged by the complainant. But during the year 1990, when the husband of the accused had borrowed Rs.5,000/-

from the complainant, a blank signed cheque was given to the complainant as security and the said cheque was later misused for prosecuting the accused under Section 138 of the Negotiable Instruments Act, 1881 (for short the 'N.I.Act').

3.To prove the execution and issuance of the cheque, the complainant was examined as P.W.1 and Exts.P1 to P6 were marked in evidence. After analysing the evidence of P.W.1, the trial court observed that he has given evidence in terms of the averments in the complaint and nothing brought out in the cross-examination to discredit his evidence. In the above view of the matter, it was held that the complainant had successfully discharged the initial burden of proof and thereby the presumption under Section 118(a) and 139 of the N.I. Act would stand in favour of the complainant.

4. Coming to the rebuttal evidence, the accused was examined as D.W.1 and her husband was examined as D.W.2. After analysing the evidence of D.Ws.1 and 2 the trial court held that the interested testimonies of the accused and her husband will not be sufficient to rebut the presumption. It is also contended that the accused had sent a reply notice denying the liability under

Ext.P1 cheque. But the appellate court specifically observed that it is pertinent to note that in the chief examination of both D.Ws.1 and 2 there is no allegation regarding the sending of any reply notice by the accused to the complainant and the documents relied on by the learned counsel for the appellant were not seen marked in evidence through the witnesses. That apart, it is pertinent to note that even in the appellate stage the accused had not produced the copy of the reply notice said to have been sent by him. But it is her case that the reply was returned as "unclaimed". Had it been so, she could have produced that returned envelope. In the absence of the said envelope in evidence it cannot be held that the accused had denied the liability through reply notice. After reappreciating the evidence of D.Ws.1 and 2 the appellate court also held that the accused miserably failed to rebut the presumption under Section 118(a) and 139 of the N.I. Act. There is no illegality or impropriety in the above finding and I do not find any perversity in the appreciation of evidence. Consequently, the conviction under Section 138 of the N.I. Act entered against the petitioner would stand confirmed.

5. Coming to the sentence, it is seen that the sentence imposed on

the revision petitioner is proportionate with the nature and gravity of the offence under Section 138 of the N.I. Act. Though the trial court had imposed interest @ 12%, in appeal, the appellate court rightly reduced the same to 6%. Therefore, I do not find any reason to interfere with the modified sentence imposed on the revision petitioner by the appellate court.

6. The learned counsel for the revision petitioner urged for some time to pay the compensation. Considering the nature and gravity of the offence, the revision petitioner is given three months time to pay the compensation. Consequently, in supersession of the sentence imposed by the court below, 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. She shall pay a compensation of Rs.1,00,000/- (Rupees one lakh only) with 6% interest from 4.5.2004 to the complainant within three months from today.
- iii. She shall appear before the trial court to suffer the substantive sentence of simple imprisonment for one day on or before 26.6.2015 with sufficient proof to show payment of compensation.

- iv. In default, she shall undergo simple imprisonment for three months.

In the result, this criminal revision petition is disposed of accordingly.

Sd/–
(K.HARILAL, JUDGE)

okb.