

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

Crl.Rev.Pet.No. 2540 of 2005 ()

Crl.A 167/2003 of SESSIONS COURT, WAYANAD, KALPETTA
DATED 29-04-2005

CC 158/2003 of C.J.M., KALPETTA DATED 05-08-2003

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

K.V. PRAMOD, S/O.VENKITTAKRISHNAKADUVAN
MATHOOR ESTATE, KARIMBUMEL, WAYANADU.

BY ADV. SRI.LALGI P.THOMAS

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE :

1. P.V. SUDEER, S/O. N. GOVINDA NAMBISHAN,
SREENIVAS HOUSE, ARYNOOR, BANAMARAM P.O.
WAYANADU DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
DIRECTOR OF PROSECUTION, HIGH COURT OF KERALA
ERNAKULAM.

R1 BY ADVS. SRI.JOHN K.GEORGE
SRI.P.K.VARGHESE

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 30-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No. 2540 of 2005

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Dated this the 30th day of June, 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.167/2003 on the files of the Sessions Judge, Wayanad, Kalpetta. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.158/2003 on the files of the Chief Judicial Magistrate's Court, Kalpetta. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for one day till rising of the court and to pay a fine of ₹2,90,000/-, out of which, ₹2,84,000/- shall be paid to the complainant by way of compensation under Section 357 Cr.P.C. In default, he

shall undergo simple imprisonment for two months.

2. The case of the complainant is that the accused borrowed an amount of ₹2,84,000/- from him and in discharge of that liability, the accused issued Ext.P1 cheque dated 17.8.1998, drawn on the Panamaram Branch of Canara Bank, to him. When the cheque was presented for encashment, the same was dishonoured and returned for want of sufficient funds. He has deposed in conformity with the averments in the complaint.

3. In defence, when the accused was questioned under Section 313 of Cr.P.C, he deposed that he had some financial transaction with one A.P.Vijayan Nambeesan, who is an employee of Federal Bank, Kalpetta, as well as the brother in law of PW1 and in that transaction, the accused has given some cheques to him and that the complainant has misused those cheques and created Ext.P1. Though the accused has raised such a contention, no evidence has been adduced to show that he had some financial transaction

with the said Vijayan Nambeesan and he had issued cheques to him. Though the accused had produced Exts.D1 to D3 to contend that when the amount was allegedly borrowed from him, some amount was due from him to the sister of the complainant . Therefore, there is no possibility to advance some amount to the accused by the brother. As rightly held by the court below, merely because there was some transaction under Ext.D2, he cannot be said that the complainant has not advanced money to the accused and issued Ext.P1 cheque in discharge of that liability. The court below is justified in rejecting the contention advanced in defence by the accused and thereby the accused failed to rebut the presumption under Section 139 and 118(a) of the N.I.Act, which stood in favour of the complainant.

4. 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.

5. The courts below had concurrently found that the complainant/1st respondent had successfully discharged 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 1st respondent. So also, it is found that the debt due to the 1st respondent was a legally enforceable debt and Ext.P1 cheque was duly executed and issued in discharge of the said debt.

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

7. 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 sometime to pay 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.

8. 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.

9. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, I am inclined to grant '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 undergo simple imprisonment for one day till rising of the court.

ii. The Revision Petitioner shall pay a fine of Rs.2,90,000/- (Rupees Two lakhs Ninety thousand only) within a period of 'three' months from today and the same shall be given to the 1st respondent/complainant as

compensation under Section 357(1) of the Cr.P.C. If the petitioner had deposited any amount in compliance with the direction of this Court or the appellate court, the same shall be given credit to and the balance alone needs to be paid as fine. In that event, the complainant is allowed to realise such deposit, if any.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 1st October, 2015 with sufficient proof to show payment of fine.

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

The Criminal Revision Petition is disposed of accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge