

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

Crl.Rev.Pet.No. 2764 of 2005 (A1)

AGAINST THE JUDGMENT IN CRL.A 786/2004 of I ADDL. SESSIONS
COURT, ERNAKULAM DATED 05-07-2005

AGAINST THE JUDGMENT IN CC 1206/2000 of J.M.F.C.-I,ERNAKULAM
DATED 14-07-2004

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

P.K.RAJENDRAN,
BLOCK NO.1147, KALLUR POST, THOOKKUPALAM
IDUKKI.

BY ADVS.SRI.GOVIND K.BHARATHAN (SR.)
SRI.MANU MOHAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE:

1. JOHN VICTOR.P.A,
48/1661, VALIAPARAMBIL ELAMAKKARA, COCHIN.

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

R1 BY ADV. SRI.K.G.SARATHKUMAR
R2 BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 22-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Crl.R.P. No.2764 of 2005

Dated this the 22nd day of June, 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.786/2004 on the files of the court of the I Additional Sessions Judge, Ernalulam. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in C.C.No.1206/2000 on the files of the Judicial First Class Magistrate's Court-I, Ernakulam. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for one day till rising of the court and to pay to the complainant Rs.70,000/- as compensation under Section 357 (3) of the Cr.P.C. and in default to

undergo simple imprisonment for three months.

2. The case of the complainant is that in order to discharge the liability of the brother of the accused, the accused had issued Exts.P1 and P2 cheques for an amount of Rs. 35,000/- each and when the said cheques were presented for encashment, the same were dishonoured with an endorsement "Account Closed". The accused, in defence, contended that Exts.P1 and P2 cheques had been issued under coercion exerted by the complainant. It is also contended that since the cheques were returned on the reason that the account was closed, the offence under section 138 of the N.I. Act is not maintainable against the accused. The court below has specifically and elaborately considered the contentions raised by the accused and held that as regards the allegation of coercion, except the oral assertion of the accused, there is no evidence to show that the cheques were obtained by the complainant by way of coercion. Even though the accused has produced Ext.D1 lawyer notice, the same would not go to show that the cheques were issued as a result of the

coercion exerted by the complainant. As regards the second contention, the court below rejected the said contention relying on the decision laid down by the Supreme Court in Goa Plast (P) Ltd v. Chico Ursula D'souza [2004 (3) KLT 93 (SC)]. In the above decision, the Apex Court held that "once cheque is issued by a drawer, the presumption under Section 139 must follow and merely because the drawer issued notice to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138 of the N.I. Act by the drawee or the holder of the cheque in due course. In view of the above decision, the court below is justified in rejecting the said contention also. I do not find any kind of illegality or impropriety in the above finding. The revision petitioner is given three months time to pay the compensation. Consequently, 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.70,000/- to

the 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 23/9/2015 with sufficient proof to show payment of compensation.

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

This criminal revision petition is disposed of as above.

Sd/-
K. HARILAL, JUDGE

okb.