

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYAISHTA, 1937

Crl.Rev.Pet.No. 2963 of 2005

AGAINST THE JUDGMENT IN CRL.A.NO. 301/2004 of ADDITIONAL
SESSIONS COURT (ADHOC-III), KASARAGODE DATED 03-10-2005.

AGAINST THE JUDGMENT IN CC 419/2002 of J.M.F.C.-II,
HOSDRUG DATED 02-08-2004.

REVISION PETITIONER(S)/APPELLANT.ACCUSED:

NAJUMUDEEN.V.P., S/O.V.P.USMANKOYA,
MYLATTY (HOUSE), KARICHERY ROAD, P.O.MYLATTY,,
HOSDURG TALUK.

BY ADVS.SRI.T.B.SHAJIMON
SMT.GOVINDU P.RENUKADEVI

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE:

1. K.AMBU, S/O.K.V.KANNAN, R/AT
SOUPARNIKA, NHEKIL P.O., MYLATTY,
HOSDURG TALUK, REPRESENTED BY ITS POWER OF
ATTORNEY HOLDER V.SHANKARAN, AGED 54 YEARS,
S/O.K.V.KANNAN, SRI.MOOKAMBIKA, NEX NHEKLI,
P.O.MYLATTY, HOSDURG TALUK.

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

R1 BY ADV. SRI.K.SHRIHARI RAO
R2 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 12-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.2963 of 2005

Dated this the 12th 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.301 of 2004 on the files of the Additional Sessions Judge (Ad-hoc) III, Kasaragod. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.419 of 2002 on the files of the Judicial First Class Magistrate's Court-II, Hosdurg. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple

imprisonment for one year and to pay a fine of ₹2,75,000/-. In default, to undergo simple imprisonment for a further period of six months and if the fine amount is realised, the cheque amount of ₹2,50,000/- will be paid to the complainant as compensation.

2. The complainant's case is that the accused had availed a loan of ₹2,50,000/- from the complainant and in discharge of the said liability, the accused issued a cheque for ₹2,50,000/- in favour of the complainant. When the cheque was presented for encashment, the same was dishonoured for want of sufficient fund.

3. In defence, the accused, while examining the complainant, suggested that Ext.P1 cheque is a signed blank cheque given by the accused in connection with a loan amount of ₹50,000/- obtained from the complainant as security and even after re-payment of the said ₹50,000/-, the complainant has not returned the signed blank cheque and concocted it as Ext.P1.

Apart from the above suggestion, in the suggestion made in the cross-examination of P.W.1, the accused has not adduced any evidence to substantiate his case, at least with the yardstick of preponderance of probability. More importantly, despite the receipt of the lawyer's notice demanding such a huge amount from the complainant, the accused has not sent a reply denying the demand made by the complainant. As rightly observed by the court below, what is expected from an ordinary prudent man is to react on getting the notice like Ext.P3 claiming huge amount. A prudent man is expected to send a reply; but the accused has not cared to deny the claim and there lacks bona fides of the contention. I do not find any illegality in the finding that the accused miserably failed to rebut the presumption under Secs.139 and 118(a) of the N.I. Act. In *Kumar Exports v. Sharma Carpets* [2009 (1) KLT 197 (SC)], the Apex Court held that bare denial or suggestion in cross-examination of the complainant is not sufficient something probable

as to brought on record for getting the burden of proof shifted to the complainant.

4. In the Memorandum of Revision Petition, the revision petitioner reiterated the contentions which were raised before the courts below and got rejected concurrently. The revision petitioner 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. It is also contended that the sentence imposed on the Revision Petitioner is disproportionate with the gravity and nature of the offence contemplated under Sec.138 of the N.I. Act.

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, I find that the sentence imposed on the revision petitioner is a little excessive and disproportionate with the nature and gravity of the offence. Consequently, in supersession of the sentence imposed on the revision petitioner, by the courts below, the revision petitioner will stand convicted as follows:

- i. The Revision Petitioner shall undergo simple imprisonment for one day till rising of

the court.

ii. The Revision Petitioner shall pay ₹2,50,000/- (Rupees Two lakhs and fifty thousand only) to the 1st respondent as compensation under Sec.357(3) of the Cr.P.C. within a period of three months from today.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 14/9/2015 with sufficient proof to show payment of compensation.

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

The Criminal Revision Petition is disposed of accordingly.

(K. HARILAL, JUDGE)

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