

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. 3126 of 2005 (A2)

AGAINST THE JUDGMENT IN CRL.A 968/2004 of II ADDL.SESIONS
COURT,ERNAKULAM DATED 07-10-2005

AGAINST THE JUDGMENT IN CC 1493/2001 of J.M.F.C.-II, KOCHI
DATED 24-09-2004

REVISION PETITIONER(S)/APPELLANTS/ACCUSED.:

1. STAR TRADING COMPANY, GENERAL MERCHANTS
& COMMISSION AGENTS, BASIN ROAD, ERNAKULAM,
KOCHI-31, REP. BY PROPRIETOR, A.M.SADHIQ.

2. A.M.SADHIQ, PROPRIETOR, STAR TRADING
COMPANY, SL/4216, STAR COTTAGE,
ST.ALBERTS SCHOOL ROAD, KOCHI.

BY ADV. SMT.M.K.PUSHPALATHA

RESPONDENTS/RESPONDENTS/COMPLAINANT AND STATE.:

1. M/S.ARAFA TRADING COMPANY,
MERCHANTS & COMMISSION AGENTS, BAZAR ROAD,
MATTANCHERRY, KOCHI-2, REP. BY P/A HOLDER
ALSAM.

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

R1 BY ADV. SRI.K.N.SIVASANKARAN

R1 BY ADV. SRI.V.V.ASOKAN

R1 BY ADV. SRI.SUNIL SHANKER

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:

OKB

K.HARILAL, J.

Crl.R.P. No.3126 of 2005

Dated this the 30th 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.968/2004 on the files of the court of the II Additional 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.1493/2001 on the files of the Judicial First Class Magistrate's Court-II, Kochi. According to the impugned judgment, the second revision petitioner was sentenced to undergo simple imprisonment for one day till rising of the court and to pay a compensation of Rs.50,000/- to the

complainant under Section 357(3) of the Cr.P.C. and in default to undergo simple imprisonment for three months.

2. The complainant's case is that the complainant is a firm carrying out the business of grains and pulses. The accused purchased goods from the complainant company and towards the value of the goods issued two cheques each for Rs.50,000/-. When the cheque dated 10.4.2001 drawn on Dhanalakshmi Bank was presented for encashment, it got dishonoured for want of sufficient funds. Even after serving of notice, there was no payment. Hence a complaint was preferred against the accused.

3. Per contra, in defence, the accused contended that the business was closed on 9.2.2001 and the cheque in dispute was taken away and misused by some estranged staff. So, the signature in the cheque is not that of the accused. Thus, it was contended that there was no legally enforceable debt under Ext.P1 cheque.

4. Going by the impugned judgment, it is seen that the court below has meticulously considered the

contentions raised by the accused. Though he contended that the cheque was taken away and misused by his estranged staff, no evidence had been adduced to substantiate the said contention at least with the standard of preponderance of probability. Similarly, though he denied the signature in the cheque, the learned Magistrate compared the signature on Ext.P1 cheque with the admitted signature of the accused on the vakalath, bail bond and 313 statement and arrived at a conclusion that the signature on Ext.P1 is that of the second accused, who had drawn and issued the cheque. The appellate court also perused the vakalath, 313 statement and the bail bond of the accused. All these documents bear the signature similar to that in Exts.P1 and P1(a). The seal of the proprietary concern is affixed on Ext.P1 series and on vakalath. In the light of the above observations, the court below is justified in rejecting the contention that the signature in Ext.P1 Cheque is not the signature of the second accused. Thus, I find no illegality, impropriety or irregularity in the impugned judgment.

5. 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.

6. Having regard to the nature and gravity of the offence and in the light of the decisions quoted above, the revision petitioner is given two months time to pay the compensation. Consequently, this revision petition will stand disposed of and the revision petitioner is sentenced as follows:

i. The second revision petitioner shall

undergo simple imprisonment for one day till rising of the court.

- ii. He shall pay a compensation of Rs.50,000/- (Rupees Fifty thousand only) within a period of two months from today to the first respondent/complainant, under Section 357 (3) of the Cr.P.C.
- iii. He shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 31/8/2015 with sufficient proof to show payment of compensation.
- iv. In default, he shall undergo simple imprisonment for a period of one month.
- 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 1st respondent/complainant is allowed to realise such deposit, if any.

The Criminal revision petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.