

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

Crl.Rev.Pet.No. 3139 of 2005 ()

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IN CRL.A 514/2004 of ADDL.SESIONS COURT, THRISSUR
IN ST 746/2002 of C.J.M.,THRISSUR**

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

**V.M. AJITHA, AGED 34 YEARS,
W/O. SADANANDAN, C/O. C.C. FRANCIS, 'VIMALALAYA'
KUTTANKULANGARA LANE, PUNKUNNAM, THRISSUR.**

BY ADV. SRI.A.F.SEBASTIAN

RESPONDENT(S)/COMPLAINANT::

- 1. K.M. MAHALAKSHMY, W/O. NARAYANA IYYAR
MANAKATTU MATTOM, C/O. THOTTAPATH MADHAVAN
SEETHARAM MILL LANE, PUNKUNNAM, THRISSUR-2.**
- 2. STATE OF KERALA REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

**R1 BY ADV. SRI.G.SREEKUMAR (CHELUR)
R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
03-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VS

K.HARILAL, J

Crl.R.P.No.3139 of 2005

Dated this the 3rd day of July, 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.514/2004 on the files of the court of the I Additional Sessions Judge, Thrissur. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in S.T.No.746/2002 on the files of the Judicial First Class Magistrate's Court, Thrissur. 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 a fine of Rs.35,000/- to the complainant as compensation under Section.357(1) of the Cr.P.C.

2. The complainant's case is that the accused

was having liability to pay an amount of Rs.60,000/- to the complainant. Towards the partial discharge of the said amount, the accused issued a cheque for Rs.30,000/- dated 30-02-2002 to the complainant and when the said cheque was presented for encashment, the same was dishonoured for want of sufficient funds. Per contra, in defence, when the accused was examined as DW1, she contended that she borrowed an amount of Rs.10,000/- from the complainant in January 2001 and she failed to return the same in time. Even in February 2002, the complainant went to her house and abused her with filthy language. Due to that, the accused filed a complaint before the police against the complainant. Both the accused in complaint were surrendered to the police station and the accused were directed to issue a cheque to the complainant for Rs.30,000/-, which was not acceptable to the complainant. Thereafter, when she verified her cheque book, which was kept in her house, noticed that all the cheque leaves were not in it. Since

she had not signed the cheque leaves, she did not bother about it. In short, according to the accused, complainant forged the signature and misused one of the several cheques taken away from her house with the help of police. Even though, the accused disputed with the signature, no steps had been taken to seek expert opinion to prove the forgery of the signature. The burden is heavy on him to prove that the signature shown in the cheque is not his signature. But the court below compared the signature with the admitted signature of the accused in acknowledgment card, deposition of DW1 and found that the name of the accused is written in a more or less similar manner and a mark is seen put as signature. In the Vakkalath also the signature was found similar to that of the accused. After verification, the court below held that it cannot be said that the signature in Ext.P1 cheque was not that of the accused. There is no reason to disbelieve the verification of signature made by the court. Therefore, it can be safely concluded that the signature in

the cheque is that of the accused. Similarly, though cheque leaves were found missing from her house, no complaint has been filed before any of the authorities. In the above view of the matter, the court below is justified in finding that the accused miserably failed to rebut the presumption under Section 118A of 139 IPC in favour of the petitioner.

3. 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.

4. The courts below had concurrently found that the complainant/first respondent had successfully

discharged the 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 first respondent. So also, it is found that the debt due to the first respondent was a legally enforceable debt and Ext.P1 cheque was duly executed and issued in discharge of the said debt.

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

6. 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 some time to pay the fine, if this revision petition is found merit less, as he is unable to raise the said amount forthwith due to paucity of funds.

7. 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.

8. Having regard to the nature and gravity of the offence and in the light of the decisions quoted above,

the revision petitioner is given three months time to pay the fine. Consequently, this revision petition will stand disposed of subject to the following terms:

- i. The revision petitioner/accused shall pay a fine of Rs.35,000/-(Rupees thirty five thousand only) within a period of three months from today and the same shall be given to the complainant/first respondent as compensation under Sec.357(1) of Cr.P.C.
- ii. He shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 03-10-2015 with sufficient proof to show payment of fine.
- iii. In default, he shall undergo simple imprisonment for a period of three months.

The Criminal revision petition is disposed of accordingly.

Sd/-
K.HARILAL
JUDGE

VS

