

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. 3206 of 2005 (A2)

AGAINST THE JUDGMENT IN CRL.A 467/2004 of SESSIONS COURT,
KOZHIKODE DIVISION DATED 26-10-2005

AGAINST THE JUDGMENT IN ST 136/2004 of SPL.J.M.F.C. FOR TRIAL
OF MARADU CASES, KOZHIKODE DATED 23-06-2004
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REVISION PETITIONER(S)/APPELLANT/ACCUSED::

SRI. KANARA KUTTY, S/O. MUTHORAN,
PADINJAREL HOUSE, POST KANNANKARA, KOZHIKODE DISTRICT.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE::

1. SRI.C.D. BOBY, PROPRIETOR,
CHEMMANNUR JEWELLERS, M.M. ALI ROAD, KOZHIKODE.

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

R1 BY ADV. SRI.SUNNY MATHEW

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.3206 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.467/2004 on the files of the court of the Sessions Judge, Kozhikode Division. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in S.T.No.136/2004 on the files of the Judicial First Class Magistrate's Court (Marad Cases), Kozhikode. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for one month and to pay a compensation of Rs.52,000/- to the complainant.

2. The complainant's case is that he is the owner

of a jewellery and the accused purchased gold ornaments from his shop and in that transaction an amount of Rs.52,000/- was due to him and in discharge of the said liability the accused had drawn and issued Ext.P1 cheque dated 7.2.2002 to him for the said amount. When the cheque was presented for encashment, the same was returned for want of sufficient funds. Though the notice issued by the complainant was accepted by the accused, he failed to pay the cheque amount.

3. Per contra, in defence, the accused contended that he had introduced one Unnikrishnan to the complainant and the said Unnikrishnan has purchased gold ornaments from the shop of the complainant and in that transaction some amount was due from the said Unnikrishnan. At the time of purchase the accused had issued a signed blank cheque as security to the complainant and that cheque has been misused for prosecuting the accused under Section 138 of the N.I. Act. As rightly held by the court below, by putting forward the said defence, the accused himself admitted

that the cheque had been issued for the liability of his friend Unnikrishnan.

4. Going by the statutory mandate under Section 138 of the N.I. Act, a cheque can be issued in discharge, in whole or in part, of any debt or other liability. If that be so, Ext.Pl cheque issued for the liability of Unnikrishnan is valid and the accused is liable to be prosecuted for the offence under Section 138 of the N.I. Act. In addition to that, in I.C.D.S. Ltd. v. Beena Shabeer [2002 (3) KLT 218 (SC)], the Supreme Court held that a cheque issued as a security would fall under the mischief of offence under Section 138 of the N.I. Act. Therefore, the court below is justified in rejecting the contentions raised by the accused in defence.

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 three months time to pay the compensation. Similarly, the substantive sentence of simple imprisonment for one month is reduced and modified to simple imprisonment for one day till rising of the court. Consequently, in supersession of the sentence imposed by the trial court and confirmed by the Appellate Court, 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. The revision petitioner shall pay a compensation of Rs.52,000/- (Rupees Fifty two thousand only) to the 1st

respondent/complainant, within a period of three months from today.

- iii. The revision petitioner shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 30.9.2015 with sufficient proof to show payment of compensation.
- iv. In default, the revision petitioner 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.