

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

Crl.Rev.Pet.No. 3434 of 2005 ()

CRL.A 474/2005 of SESSIONS COURT,ERNAKULAM
CC 1463/1999 of ADDL.C.J.M.COURT (ECONOMIC OFFENCES),ERNAKULAM
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REVISION PETITIONER(S)/APPELLANT/ACCUSED:

T.J.ALEXANDER, INDIAN OIL CORPORATION LTD.,
MASTYAPURI, VATHURUTHY, ERNAKULAM.

BY ADVS.SRI.C.KHALID
SRI.T.P.SAJID

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. N.K.DILLI, S/O.N.K.PADMANABHAN,
NADATHOPPI HOUSE, EROOR.

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

R1 BY ADV. SRI.MATHEWS K.PHILIP
R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 23-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Crl.R.P. No.3434 of 2005

Dated this the 23rd day of July, 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.474/05 on the files of the court of the 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.1463/99 on the files of the Additional Chief Judicial Magistrate's Court (Economic Offences), Ernakulam. According to the impugned judgment, the revision petitioner was sentenced to pay a fine of Rs.3,60,000/—, out of which

Rs.3,55,000/- was ordered to be paid to the complainant as compensation, and in default, to undergo simple imprisonment for two months.

2. The case of the complainant is that the accused had borrowed an amount of Rs.3,50,000/- from him and towards the discharge of the said liability he issued Ext.P1 cheque for the said amount. When the complainant presented the cheque for encashment in the bank, it was dishonoured and returned for want of sufficient funds. When the complainant had caused to issue a lawyer notice and the accused received the same, he neither repaid the cheque amount nor sent a reply denying the liability. Thus, the accused has committed the offence punishable under Section 138 of the N.I. Act.

3. When the accused himself was examined as D.W1, he set up a case that the complainant was not known to him and he had no transaction with the complainant. His brother Vencheslavous was the captain of the Kerala Badminton Team and when there was a need of money to participate the badminton competition, the

Secretary of the Badminton Association, by name Sulaiman, borrowed an amount of Rs.30,000/- from the father of P.W.1 for 8% interest per month and in that transaction Vencheslavous obtained two signed blank cheques from the accused and handed over to the father of P.W.1 as a security for the said transaction. Even though such an alternative defence contention has been put forward, the only available evidence to substantiate the said contention is the oral assertion of D.W.1 only. As rightly observed by the court below, neither the said Vencheslavous nor the Secretary had been examined to prove that the cheque was given as a security for the amount borrowed by them jointly from the father of P.W.1. So also, in the evidence of D.W1, he had no case that Vencheslavous had given the cheques to the complainant as security for the amount borrowed. Even if the defence story is admitted as such, nothing wrong in issuing a cheque for the debt of another person. According to Section 138 of the N.I. Act, the cause of action arises when a cheque issued in discharge of a debt or other liability is dishonoured

and returned for want of sufficient funds. Inclusion of “other liability” is significant. So also, even if the cheque was an unfilled one, by handing over a signed blank cheque the drawer conveys an implied consent to the payee, whoever it be, to fill up the cheque and encash for the amount for which the signed blank cheque was handed over. There is no statutory insistence to draw the cheque by the drawer himself in his own handwriting. The above view is supported by the decision of this Court in Moideen v. Johnny [2006 (3) KLT SN 62] and further in Vijendra Singh v. Aisha motors [2012 (1) KLT SN 28]. In the above view of the matter, I find that there is no illegality or impropriety in the findings whereby the court below held that the accused miserably failed to rebut the presumptions, which stood in favour of the complainant. Therefore, I am not inclined to re-appreciate entire evidence once again and I confirm the concurrent findings of conviction.

4. The learned counsel further sought for some time to pay the fine as he is unable to raise the said

amount forthwith due to paucity of funds, if this revision petition is found meritless.

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 fine. 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 pay a fine of Rs.3,60,000/- (Rupees Three lakhs and sixty thousand only) within a period of three months from today and the same shall be given to the 1st respondent/complainant as compensation, under Section 357(1)(b) of the Cr.P.C.
- ii. In default, the revision petitioner shall undergo simple imprisonment for a period of two months.
- iii. 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.