

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

Crl.Rev.Pet.No. 456 of 2011 (B)

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 178/2010 OF THE
SESSIONS COURT, KOZHIKODE DATED 04-12-2010.

AGAINST THE JUDGMENT IN ST NO. 585/2007 of J.M.F.C.-V,
KOZHIKODE DATED 12-03-2010.

REVISION PETITIONER/APPELLANT/ACCUSED:

K.P.ANILKUMAR, AGED 32 YEARS,
S/O.RAJENDRAN, THATTADATHIL PARAMBA,
P.O.CHELEMBRA,
MALAPPURAM DISTRICT.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS/RESPONDENT/COMPLAINANT & STATE:

1. EDATHIL RAJESH, AGED 44 YEARS,
S/O.BALAN, SREESAILAM, AREEKAD,
NELLALAM PO, CALICUT 673 027.

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

BY PUBLIC PROSECUTOR SRI. MADHUBEN

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 21-01-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No. 456 of 2011-B

Dated this the 21st day of January, 2015

ORDER

The revision petitioner is the accused in S.T.No.585/2007 on the files of the Judicial First Class Magistrate's Court-V, Kozhikode, as well as the appellant in Crl. Appeal No.178/2010 on the files of the Court of Session, Kozhikode Division. He was prosecuted for the offence punishable under Sec.138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act') on a complaint filed by the 1st respondent. After trial, the learned Magistrate found the revision petitioner guilty of the said offence and convicted thereunder. He was sentenced to undergo simple imprisonment till rising of the court and to pay a

compensation of ₹20,000/- to the complainant/1st respondent and in default of payment of compensation amount, he shall undergo simple imprisonment for six months. Though he had preferred the above Crl. Appeal, after re-appreciating the evidence on record, the learned Sessions Judge also concurred with the findings of the trial court and dismissed the appeal. The legality and propriety of the concurrent findings of conviction and sentence are under challenge in this revision petition.

2. It is the case of the 1st respondent that the revision petitioner borrowed an amount of ₹17,000/- from him and towards the discharge of the said liability, the revision petitioner issued Ext.P1 cheque dated 21/1/2006 for an amount of ₹17,000/- in favour of the 1st respondent. When the said cheque was presented for encashment, the same was dishonoured for want of sufficient funds in the account of the revision petitioner. Though statutory notice had been issued and the same was received by the revision

petitioner on 3/11/2006, the revision petitioner neither paid the amount; nor sent a reply denying the liability. Thus, he has committed the offence punishable under Sec.138 of the N.I. Act.

3. The revision petitioner contended that he borrowed an amount of ₹5,000/- from the 1st respondent during 1999 and at that time, he had handed over a blank signed cheque to the 1st respondent as security and the said cheque had been mis-utilized to file the present complaint. In short, Ext.P1 cheque lacks consideration and thereby the debt is not a legally enforceable debt.

4. After considering the evidence on record, the trial court found that the 1st respondent has discharged the initial burden of proving execution and issuance of the cheque successfully and thereby the presumption under Secs.118(a) and 139 of the N.I. Act would stand in favour of the 1st respondent. But the revision petitioner miserably failed to rebut the said presumption which stood in favour of the 1st

respondent. I have meticulously considered the appreciation of evidence in the judgments of the courts below and I find that there is no illegality or impropriety in any of the findings and so also I do not find any perversity in the appreciation of evidence also.

5. But, in this revision, the learned counsel for the petitioner mainly focussed on the point that the complaint itself was not maintainable under Sec.142 of the N.I. Act. According to him, admittedly, the notice issued under Sec.138(b) was received on 3/11/2006 and the cause of action has arisen on 18/11/2006, the last day on which the revision petitioner failed to pay the amount demanded under the statutory notice. So, according to the learned counsel for the revision petitioner, since the cause of action has arisen on 18/11/2006, the complaint ought to have been filed on or before 17/12/2006. But, here the complaint had been filed on 18/12/2006. Thus, the complaint is seen filed after one month. So much so, the trial court

ought not to have taken cognizance on the complaint which was filed after one month.

6. I have considered the arguments advanced by the learned counsel for the petitioner in view of the scheme provided under Secs.138(b) and 142 of the N.I. Act. Going by Sec.142 of the N.I. Act, no court shall take cognizance of any offence punishable under Sec.138 of the N.I. Act, except upon a complaint, in writing, made by the payee and such complaint is made within one month from the date on which the cause of action arises under Clause (c) of the proviso to Sec.138 of the N.I. Act. Having considered the admitted facts of the instant case, it is seen that notice was issued on 1/11/2006 and the same was received on 3/11/2006. Indisputably, the cause of action has arisen on 18/11/2006, the 15th day on which the revision petitioner failed to pay the cheque amount demanded under the statutory notice. If the cause of action has arisen on 18/11/2006, certainly the complaint should have been filed on or before

17/12/2006. But, in the instant case, admittedly, the complaint had been filed on 18/12/2006 only.

7. It is true that under the proviso to Sec.142 of the N.I. Act, the cognizance of a complaint can be taken by the court after the prescribed period if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period of one month from the date of cause of action. In the instant case, the complainant had no such case and the complaint is filed under the assumption that it was within one month. But, in fact, there is a delay of one day in filing the complaint and the same was not brought to the notice of the trial court at the time of taking cognizance on the complaint. I am of the opinion that even if it is a delay of one day, the complaint was not maintainable under Sec.142(b) of the N.I. Act. The learned Magistrate should not have taken cognizance of the offence, on the basis of the complaint which was not maintainable under law. Consequently, I find that both the courts below

concurrently failed to consider the legal issue involved in this revision petition. The trial court ought to have dismissed the same in limine.

8. In the result, the conviction entered and the sentence imposed on the revision petitioner are set aside and the revision petitioner is acquitted of the offence.

This revision petition is accordingly allowed.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge