

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

Cr1.Rev.Pet.No. 1003 of 2008 ()

AGAINST THE JUDGMENT IN CRL.A 613/2006 of SESSIONS COURT,
KOZHIKODE DATED 16-07-2007

AGAINST THE JUDGMENT IN ST 1152/2005 of SPL.J.M.F.C.(MARAD
CASES), KOZHIKODE DATED 26-08-2006

...

REVISION PETITIONER/APPELLANT/ACCUSED::

K.M. JOY,
KOLUTHAPPALLAYIL HOUSE, P.O. PATHANPARA, ALAKODE VIA,
KANNUR.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT::

1. PARASMAL LUNAWAT, S/O. PADMACHAND JAIN,,
PROPRIETOR, DOLPHIN FINANCIAL SERVICE, EKP COMPLEX
KALLAI ROAD, CALICUT.
REP. BY POWER OF ATTORNEY HOLDER K.GIRISHAN
S/O. BHASKARAN, GREENS, PUTHIYARA P.O.
CALICUT.

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

R2 BY PUBLIC PROSECUTOR SMT. MADHU BEN
R1 BY ADV. SRI.E.NARAYANAN
R1 BY ADV. SRI.SRINATH GIRISH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 12-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Crl.R.P. No.1003 of 2008

Dated this the 12th day of October, 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.613/06 on the files of the Sessions Judge, Kozhikode Division. The above appeal was filed challenging the judgment, whereby the revision petitioner was found guilty of the said offence, passed in S.T.No.1152/05 on the files of the Special Judicial First Class Magistrate's Court (Marad Cases), Kozhikode. According to the impugned judgment, the revision petitioner stands sentenced to undergo simple imprisonment for one day till rising of the court and to pay a compensation of Rs.46,240/- to the complainant under Section 357(3) of the Cr.P.C. and in default to undergo simple imprisonment for two

months.

2. The complainant's case is that he is the proprietor of a financial concern carrying on business in the name and style 'Dolphin Financial Service' and the accused had availed of a hire purchase loan in respect of his vehicle from 'Asha Finance' at Chennai and in that transaction he owes a sum of Rs.46,240/- to the said financial concern at Chennai. Towards discharge of the said liability he executed and issued Ext.P3 cheque and on presentation for collection, it was dishonoured and returned for insufficient funds. Though notice under Section 138(b) was issued and the same was accepted by the petitioner, he failed to pay the amount. Asha Finance had appointed the complainant as their collection and recovery agent, by the Power of Attorney executed by them and in exercise of that power the complainant has filed the said complaint alleging commission of the offence punishable under Section 138 of the N.I. Act.

3. To discharge the initial burden, the power of attorney holder of the complainant was examined as P.W.1 and Exts.P1 to P5 were marked. After evaluating

the evidence, the courts below concurrently found that the complainant had successfully discharged the initial burden and thereby the presumptions under Sections 139 and 118(a) of the N.I. Act would stand in favour of the complainant. I do not find any perversity in the appreciation of evidence from which those findings were arrived at. What remains to be considered is, whether the accused had rebutted the presumptions under the N.I. Act, which stood in favour of the complainant.

4. In defence, the accused was examined as D.W.2. No documentary evidence was adduced to substantiate their contention. The sum and substance of the contentions raised in the evidence of P.W.1 and the statement under Section 313 of the Cr.P.C. is that Ext.P3 cheque was a blank signed cheque issued to Asha Finance at Chennai. Thus, the signature as well as issue of the cheque stands admitted. No evidence had been adduced to prove that at the time when Ext.P3 was issued, it was a blank signed cheque only, and the contents of the cheque were filled up later. Even if the said contention is admitted at its entirety, the

same is liable to be rejected in view of the decision of this Court reported in Lillykutty v. Lawrance [2003 (3) KLT 721], wherein it has been held that, the mere fact that the payee's name and amount shown are not in the hand writing of the drawer does not invalidate the cheque. No law provides that body of the cheque has to be written by drawer only in his own handwriting. What is material is the signature of the drawer only and not the body of the instrument. In Bhaskaran Nair v. Abdul Kareem [2006 (4) KLT 48], this Court held that the defence that a signed blank cheque was handed over by an account holder is intrinsically suspicious one and must be appreciated with great care and caution. No account holder is expected to deal with a cheque in such a casual, careless, irresponsible and indifferent manner and such a defence is impossible unless the same is proved by contra evidence. In view of the decisions referred above, the contentions raised by the revision petitioner will stand rejected.

5. 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.

6. 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.

7. In modification of the sentence imposed 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. He shall pay a compensation of Rs.46,240/- (Rupees Forty six thousand two hundred and forty only) within a period of three months from today to the 1st respondent/complainant, under Section 357(3) of 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 12.01.2016 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.