

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

Cr1.Rev.Pet.No. 3525 of 2007

Cr1.A 79/2007 of ADDL. DISTRICT & SESSIONS COURT (ADHOC)-II,
THODUPUZHA

ST 1565/2005 of J.M.F.C., KATTAPPANA

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

E.T.ANTONY, ELANTHOOR HOUSE,
SANTHIGRAM P.O., KALKOONTHAL VILLAGE.

BY ADV. SRI.S.SACHITHANANDA PAI

RESPONDENT(S)/RESPONDENTS/COMPLAINANT&STATE :

1. M.G.GIRIJAN, MULLUTHAZHA HOUSE,
VALIYATHOVALA P.O. IDUKKI (DT)

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

R1 BY ADV. SRI.JOICE GEORGE

R2 BY PUBLIC PROSECUTOR SRI.JIBU.P.THOMAS.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 31-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

STU

K.HARILAL, J.

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Crl.R.P.No.3525 of 2007

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Dated this the 31st day of July, 2015

ORDER

The revision petitioner is the accused in ST No.1565/2005 on the files of the Judicial First Class Magistrate's Court, Kattappana and the 1st respondent herein is the complainant who filed the above private complaint. The revision petitioner was prosecuted for the offence punishable under Sec.138 of the Negotiable Instruments Act, on the above private complaint and after trail, the learned Magistrate found that the revision petitioner guilty of the above said offence and convicted thereunder. He was sentenced to undergo simple imprisonment for one year and to pay a compensation of Rs.1,00,000/- to the complainant under Sec.357(3) Cr.P.C and in default, to undergo simple imprisonment for a further period of three months. Though he challenged the

conviction and sentence in Criminal Appeal No.79/2007 before the Additional District and Sessions Court (Adhoc-II), Thodupuzha, after re-appreciating the evidence on record, the learned Sessions Judge also concurred with the findings of conviction and sentence as such without any interference. The legality and propriety of the concurrent findings of conviction and sentence are under challenge in this revision petition.

2. Heard the learned counsel for the petitioner and the learned counsel for the 1st respondent.

3. The learned counsel for the petitioner advanced arguments assailing the concurrent findings of conviction and sentence on several grounds.

4. The main thrust of the argument, in defence, set up by the accused under 313 statement was that, Ext.P1 cheque leaf was not issued from the account maintained by him in the bank and he did not issue Ext.P1 cheque to the complainant. In short, he is not the account holder of the

account from which Ext.P1 cheque had been issued. According to the accused, the burden is on the complainant to prove that Ext.P1 cheque was issued from the account maintained by him in the bank; but that burden has not been discharged.

5. Per contra, the learned counsel for the 1st respondent advanced arguments to justify the findings whereby the court below found that the petitioner is guilty of the said offence.

6. Going by the impugned judgment, it is seen that the accused had set up a case in the statement under Section 313 Cr.P.C is that, he did not borrow any money from the complainant and he did not issue Ext.P1 cheque as he was not the holder of the account, from which Ext.P1 cheque had been issued. In short, Ext.P1 cheque does not belong to an account maintained by him in the bank. Thereafter, it is seen that, in view of the denial of account, the complainant had filed Crl.M.P.No.1144/2007 before the trial court to call

for the details of the account No.14979 of the Union Bank of India, Kattappana Branch, to ascertain the identity of the account holder of Ext.P1 cheque and also to know as to whether Ext.P1 cheque was issued from this account. After perusing the records, the learned Sessions Judge observed that, that petition was dismissed on 9.3.2007 vide separate order. But this separate order was not found among the lower court records. When contacted with the lower court to get the copy of the order, it was informed that there is no separate order in that court. But, the appellate court has not made any further attempt to ascertain whether there was any such order dismissing that petition.

7. However, the learned counsel for the petitioner further submits that it is a specific case of the complainant that the accused had issued two cheques for ₹1,00,000/- each from the same account and both cheques were dishonoured and returned for want of sufficient funds and two complaints were filed alleging the commission of

offence under Section 138 of the N.I.Act. In the other case, the account extract of the disputed cheque, which was issued along with Ext.P1 cheque, was produced and found that the accused is not the holder of the account, from which that cheque was issued. In view of the acquittal of the accused in the other case, which was filed along with this case, alleging the very same offence, based on another cheque, allegedly issued from the same account, the learned counsel sought for an opportunity to adduce evidence in this case also to prove Ext.P1 cheque was also not issued from the account maintained by the accused as alleged by the complainant. It follows that if he is not the account holder of that account, certainly, he cannot be held liable for the dishonour of the cheque. In the above context, I find force in the arguments advanced by the learned counsel for the petitioner. Further, I find that the matter in issue involved in this case can be determined only on getting answer to the question whether Ext.P1 cheque had

been issued on the account maintained by the petitioner.

8. Hence, the impugned judgments under challenge will stand set aside and the matter is remitted to the trial court for fresh consideration, after affording sufficient opportunities to both parties to adduce evidence. It is made clear that the petitioner/accused is allowed to take steps to prove that Ext.P1 cheque does not belong to his account. The parties shall appear before the trial court on 1st September, 2015. The trial court is further directed to dispose of the matter within a period of three month from 01.09.2015.

The revision petition is disposed of.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge