

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

Crl.Rev.Pet.No. 4467 of 2006

AGAINST THE JUDGMENT IN CRL.A.NO. 630/2004 of ADDITIONAL
SESSIONS COURT, MANJERI.

AGAINST THE JUDGMENT IN ST 6/1996 of J.M.F.C.-II (FOREST
OFFENCES), MANJERI.

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

P. PRASANNAN @ RAJI,
S/O. PARAMESWARAN, AGED 34 YEARS, PARAKKAL HOUSE
P.O. THIRUVILLAMALA, THRISSUR DISTRICT.

BY ADVS.SRI.G.HARIHARAN
SRI.PRAVEEN.H.

RESPONDENT(S)/COMPLAINANT/RESPONDENTS:

1. P. VELAYUDHAN, AGED 31 YEARS,
S/O. CHATHAN, PULATH ERMADAN HOUSE, P.O. MANJERI,
MALAPPURAM DISTRICT.

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

R1 BY ADV. SRI.K.M.SATHYANATHA MENON
R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 18-08-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.4467 of 2006

Dated this the 18th day of August, 2015

ORDER

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.630 of 2004 on the files of the Additional Sessions Judge, Manjeri. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T. No.6 of 1996 on the files of the Judicial First Class Magistrate's Court-II (Forest Offences), Manjri. According to the impugned judgment, the

Revision Petitioner is sentenced to undergo simple imprisonment for three months and to pay a compensation of ₹50,000/-. In default, to undergo simple imprisonment for a further period of one month.

2. The complainant and accused are friends. The case of the complainant is that the accused borrowed an amount of ₹50,000/- from him for his business purpose and in discharge of the said liability, the accused had drawn and issued Ext.P1 cheque for the said amount and when he presented the cheque for encashment, the same was dishonoured and returned for want of sufficient funds. Though he had caused to issue a lawyer's notice, the accused had refused to accept the notice and he did not pay the cheque amount. Thus, he has committed the offence punishable under under Sec.138 of the N.I. Act.

3. To discharge the initial burden, the complainant was examined as P.W.1 and Exts.P1 to P9

were marked. The Branch Manager of the Bank was examined as P.W.2. After analysing the aforesaid evidence, the courts below concurrently found that the complainant has successfully discharged the initial burden.

4. What remains to be considered is whether the accused had succeeded in rebutting the presumptions under Secs.139 and 118(a) of the N.I. Act which stood in favour of the complainant.

5. The specific case in defence put forward by the accused in the statement under Sec.313 Cr.P.C. and by the evidence of D.W.1 is that Ext.P1 cheque was one which was stolen away from the house of the accused by the complainant. It is also urged that after stealing the blank cheque, the complainant forged the signature and presented the same for encashment. He has not borrowed any amount from the complainant. Going by the impugned judgment, it is seen that earlier, in this case, the accused was

found guilty of the offence under Sec.138 of the N.I. Act and convicted thereunder. But, in appeal, the appellate court set aside the conviction and sentence and remanded the case back enabling the accused to adduce further evidence to rebut the presumptions under the N.I. Act which stood in favour of the complainant. The case was remanded as per the judgment in Crl. Appeal No.105/03 for fresh disposal after giving the accused sufficient opportunity to adduce evidence and also for taking steps to examine the handwriting expert by giving time for depositing batta. It was further found that non-calling of the report of the handwriting expert has resulted prejudice to the accused. Thus, the case was remanded for giving an opportunity to examine the handwriting expert to the accused.

6. In Crl. Appeal No.105/03, the learned Sessions Judge remanded the case for fresh disposal and directed the accused to deposit batta and fee payable

to the expert for examining the signature within one month from the date of pronouncement of the order in appeal. The order in Crl. Appeal No.105/03 was passed on 24/3/2004 and he should have deposited the batta for the handwriting expert on or before 24/4/2004. But, he could not deposit the batta despite the time was extended twice up to 7/7/2004 by the Sessions Court; but he failed to deposit the batta. In the above context, as rightly observed by the lower appellate court, the trial court is justified in not granting further time for depositing the expert's batta. That apart, the court below is justified in finding that the accused should have deposited the entire amount of ₹5,000/- as batta and not ₹2,000/- as contended by the accused. From the sequence of events, it could be seen that the only intention behind the remand was to prolong the matter indefinitely.

7. In the absence of expert's evidence, solely due to the laches from the part of the accused, the

trial court is justified in considering the genuineness of the signatures on the basis of other evidence. Admittedly, the cheque was returned for want of sufficient funds only and not for any difference in the signature of the drawer. When P.W.2 Bank Manager was examined, he deposed that he has got enough experience in comparing the signature and he further deposed that the signature in Ext.P1 cheque is similar to the specimen signature of the accused in the bank. There is no reason to disbelieve the evidence of P.W.2. More importantly, though the accused contended that the cheque was one that was stolen away from his house, no complaint had been given to any authority alleging the commission of the theft of the cheque from his house against the complainant. Though P.W.1 was also examined, he deposed that he has no knowledge with respect to the contention of the accused that the complainant had stolen the cheque leave from the house of the accused. As rightly

observed by the court below, the evidence of P.W.2 is sufficient to arrive at a finding that the signature in Ext.P1 cheque is that of the accused only. Thus, the accused has miserably failed to rebut the presumptions which stood in favour of the complainant. There is no illegality or impropriety in any of the findings in the impugned judgment and I do not find any perversity in the appreciation of evidence from which those findings have arrived at.

8. 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.

9. 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 vs. 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.

10. In the light of the above decisions and the nature and gravity of the offence under Sec.138 of the N.I. Act, the substantive sentence of simple imprisonment for three months will stand reduced

and modified to simple imprisonment for one day till rising of the court and the petitioner is given four months time to pay the compensation. 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 ₹50,000/- (Rupees Fifty thousand only) to the 1st respondent/complainant as compensation within a period of four months from today under Sec.357(3) of the Cr.P.C.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 18/12/2015 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 he had deposited any amount in the trial court towards compensation or fine, the same shall be given credit to and the balance alone needs to be paid as compensation or fine, as the case may be, and in that event, the complainant is allowed to realise such deposit from the court.

The Criminal Revision Petition is disposed of accordingly.

Sd/-
(K. HARILAL, JUDGE)

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P.S. to Judge