

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

Crl.Rev.Pet.No. 4489 of 2006 (A)

AGAINST THE JUDGMENT IN CRL.A.NO. 447/2004 of ADITIONAL
SESSIONS JUDGE, FAST TRACT COURT NO.III, PALAKKAD.

AGAINST THE JUDGMENT IN ST 235/2000 of C.J.M. PALAKKAD .

REVISION PETITIONER/APPELLANT/ACCUSED:

N.KRISHNAKUMAR @ UNNI,
CHIEF EXECUTIVE, M/S.KIRIDOM RELEASE,
COTTON HILLS,
THIRUVANANTHAPURAM.

BY ADVS.SRI.M.P.GOVINDANKUTTY
SRI.K.P.BALAGOPAL

RESPONDENT(S)/COMPLAINANT AND STATE:

1. REMYA ADVERTISING, THROUGH ITS
MANAGING PARTNER SUNDAR KUMAR,
S/O. PANKAJAKSHAN NAIR,
NAINAN'S STREET, METTUPALAYAM STREET, PALAKKAD.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM-682 031.

R1 BY ADV. SRI.K.R.VINOD
BY ADV. SRI.K.V.VINOD
R2 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 16-07-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No. 4489 of 2006

Dated this the 16th day of July, 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.447 of 2004 on the files of the Additional Sessions Judge, Fast Track Court No.III, Palakkad. The above appeal was filed challenging the judgment whereby the Revision Petitioner was found guilty of the said offence, passed in S.T.No.235 of 2000 on the files of the Chief Judicial Magistrate's Court, Palakkad. According to the impugned judgment, the Revision Petitioner stands sentenced to undergo

imprisonment for one day till rising of the court and to pay a fine of Rs.2,20,000/-. In default of payment of fine, to undergo simple imprisonment for three months under Sec.138 of the N.I. Act. Out of the fine amount, if paid, a sum of Rs.2,15,000/- shall be paid to the 1st respondent/ complainant as compensation under Sec.357(1)(b) of the Cr.P.C.

2. The complainant's case is that the complainant is a partnership firm represented by its Managing Partner and is engaged in making advertisements in the newspapers, magazines etc. The accused is the producer of a film by name 'Millennium Stars'. The accused and the complainant entered into Ext.P7 agreement for effecting advertisements regarding the said film and consequent on the said agreement, the complainant had effected advertisements in the newspapers, magazines etc., towards the payment of amount payable to the first respondent. In the above said transaction, the accused drawn and issued Ext.P1

series of cheques - the cheque dated 8/3/2000 for Rs.56,672/-, the cheque dated 10/3/2000 for Rs.50,375/- and the cheque dated 11/3/2000 for Rs.95,209/-. When the complainant presented the above said cheques for encashment, all the cheques were dishonoured and returned for want of sufficient funds. Though the complainant had caused to issue a lawyer's notice, the accused neither paid the cheque amount; nor send a reply denying the said liability. Thus, the accused has committed the offence alleged against him.

3. To discharge the initial burden, the complainant was examined as P.W.1 and Exts.P1 to P14 were marked. On an appraisal of the aforesaid evidence, the courts below concurrently observed that the complainant has successfully discharged the initial burden to prove, execution and issuance of the cheque. I do not find any reason to interfere with the said findings.

4. What remains to be considered is, whether

the accused had succeeded in rebutting the presumptions under the N.I. Act which stood in favour of the complainant. No evidence, either oral or documentary, had been adduced to rebut the presumptions under the N.I. Act. The accused, when examined under Sec.313 of the Cr.P.C., simply denied the liability. No explanation was put forward as to the circumstances in which Ext.P1 series of cheques happened to be in the possession of the complainant. No specific defence contentions were raised when cross-examined the complainant. In the absence of rebuttal evidence, so as to improbabilise the complainant's evidence, the court below found the accused guilty of the said offence and convicted thereunder.

5. But, in appeal, the accused raised a contention that the alleged transaction under which the amounts were due and the cheques were issued was on the basis of Ext.P7 agreement. But Ext.P7 agreement was executed between the accused and 'Kripa Films'

represented by the accused. Ext.P1 series of cheques belong to 'Kiridam Release' and therefore, Ext.P1 series of cheques were not drawn and issued to the complainant in discharge of the dues under Ext.P7 agreement. Going by Ext.P7, it is seen that it was executed between the complainant and 'Kripa Films' represented by N. Krishnakumar @ Kiridam Unni, the accused. Thus, indisputably, the accused is a party to Ext.P7 agreement. The complaint is filed by N. Krishnakumar @ Unni, Chief Executive, M/s 'Kiridam Release', Cotton Hills, Thiruvananthapuram. There is no dispute that the person named 'N. Krishnakumar' mentioned in the complaint and 'N. Krishnakumar @ Unni' mentioned in Ext.P7 agreement are one and the same person. The accused has no dispute that Ext.P1 series of cheques were drawn by the said N. Krishnakumar (Unni) on his account maintained in the South Indian Bank Ltd., Thiruvananthapuram Branch. Similarly, there is no dispute that Ext.P1 series of cheques were drawn in favour of the complainant. It

is discernible from the evidence that the complainant has two proprietary concerns, 'Kiridam Release' and 'Kripa Release'. In this context, it is pertinent to note that Ext.P7 agreement is also executed by the accused. The only dispute is that Ext.P1 series of cheques were not drawn and issued against the dues arose under Ext.P7 agreement. But, Exts.P8 to P14 documents prove the liability towards the complainant and those documents admit the issuance of the cheques. Ext.P8 letter sent by the General Manager of Kiridam Release to the complainant shows that he has forwarded Ext.P7 agreement to the complainant together with the said letter. Thus, the accused himself admits that Ext.P7 agreement was forwarded to the complainant from Kiridam Release, though Ext.P7 was executed by the accused himself in the name of his own another proprietary concern. Thus, the transaction in which the cheques were issued is one and the same, though the accused used different names of his proprietary concerns. The above view is

further fortified by Exts.P9 to P14. Exts.P9 and P10 are the two letters sent by 'Kiridam Release' and Ext.P9 letter shows that 'Kiridam Release' has forwarded five cheques to the complainant and the details of those cheques are stated in the complaint. Ext.P9 would show that two cheques in Ext.P1 series i.e., cheque dated 8/3/2000 and 11/3/2000 were forwarded to the complainant as per the letter. Similarly, Ext.P1 letter dated 12/1/2000 would show that the four cheques were forwarded to the complainant as per the said letter including the cheque dated 10/3/2000 in Ext.P1 series. Ext.P11 is an advertisement release order from 'Kiridam Release' and the same shows that 'Kiridam Release' directed the complainant to publish the advertisement of the film 'Millennium Stars' in the Mathrubhumi daily on 27/12/1999 and Malayala Manorama on 28/12/1999. Exts.P12 and P14 are the similar letters giving a direction to the complainant to publish the advertisement. Thus, Exts.P8 to P14 would clearly

show that Ext.P1 series of cheques were drawn and issued by the accused to the complainant in discharge of the amount due to the complainant. More over, the absence of reply notice raising the above contention, despite the receipt of the notice sent by the complainant threatening criminal prosecution and demanding huge amount, speaks volumes and the same can be taken as strong circumstances tempting to disbelieve the bona fides and genuineness of the belated defence contention raised in appeal only.

6. I do not find any illegality or irregularity in the above findings of the appellate court. The appellate court has meticulously considered the contentions raised in appeal and rightly rejected the contentions raised in appeal only. Therefore, the courts below are justified in finding that the accused has miserably failed to rebut the presumptions under the N.I. Act which stood in favour of the complainant.

7. 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.

8. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, seeking some time to pay the compensation, I am inclined to grant three months time to pay the compensation. Consequently, this Revision Petition will stand disposed of subject to the following terms.

- i. The Revision Petitioner shall undergo

simple imprisonment for one day till rising of the court.

ii. The Revision Petitioner shall pay a fine of ₹2,20,000/- (Rupees Two lakhs and twenty thousand only) within a period of three months from today and out of the fine amount, Rs.2,15,000/- (Rupees Two lakhs and fifteen thousand only) shall be paid to the first respondent/complainant as compensation under Sec.357(1)(b) 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 16/10/2015 with sufficient proof to show payment of compensation.

iv. In default, the Revision Petitioner shall undergo simple imprisonment for a period of three months.

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