

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

Crl.Rev.Pet.No. 4566 of 2006 ()

CRL.A 210/2005 of ADDL. SESSIONS COURT (ADHOC-I), KALPETTA

STC 1451/2004 of J.M.F.C-I, MANANTHAVADY

REVISION PETITIONER/APPELLANT/ACCUSED:

ODAMOOOLA ANTHRU, AGED 50,
S/O. MOIDEEN, ODAMOOOLA, VALLIKULANGARA
MAKKIYAD POST, MANANTHAVADY, WAYANAD.

BY ADVS.SRI.KRISHNA PRASAD. S
SRI.S.ASHOK KUMAR.

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

1. AMMOTTY, AGED 58, S/O. ANTHRU,
VAZHAYIL HOUSE, 12TH MILE, P.O.MAKKIYAD
MANANTHAVADY TALUK.

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

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

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 15-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No. 4566 of 2006

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Dated this the 15th 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.210/2005 on the files of the Additional Sessions Judge, Adhoc-I, Kalpetta. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T.C.No.1451/2004 on the files of the Judicial First Class Magistrate's Court-I, Mananthavady. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for one day till rising of the court and to pay a compensation of ₹22,000/- to the complainant under

Section 357(3) of the Code of Criminal Procedure. In default, to under simple imprisonment for one month.

2. The case of the complainant is that the accused borrowed ₹22,000- from the complainant and in discharge of the said amount, he had issued Ext.P1 cheque for the said amount in favour of the complainant. Though he caused to issue a lawyer's notice demanding the cheque amount, he has not paid the said amount; but sent a reply raising false contentions. The complainant was examined as PW1 and Exts.P1 to P6 were marked. After considering the oral evidence of the complainant coupled with Exts.P1 to P6, the court below found that the complainant has successfully discharged initial burden of proving execution and issuance of the cheque. I do not find any reason to interfere with the above finding.

3. What remains to be considered is, whether the accused has succeeded in rebutting the presumption which stood in favour of the complainant. In a statement filed

under Section 313 of the Code of Criminal Procedure, the accused contended that the signature in Ext.P1 cheque was not put by him. He has written only 'Odamoola' on the bottom of Ext.P1 cheque. Remaining writings are not of his. In 2003, he had received some amount from one Moidu towards the sale consideration of timbers agreed to be sold to him. As a security to that transaction, he had given a blank signed cheque to the said Moidu. Thereafter, though he had supplied the timbers as agreed by him, the said Moidu had not returned the cheque to him. The complainant obtained that blank signed cheque from Moidu and converted the same to Ext.P1 and instituted the present case against him by misusing the cheque.

4. Going by the impugned judgment, it is seen that though he had raised such a contention, denying the signature in the cheque, the bank has dishonoured and returned the cheque only on the reason that 'full cover not received'. As rightly held by the court below, if the

accused was having a specific case that the signature is a different one and he has not executed Ext.P1 cheque, he would have taken steps to sent the document for expert opinion. So also, he would have summoned the Manager and the documents kept in the bank to prove that the signature in Ext.P1 is different from the admitted specimen signature given in the bank. The accused has not taken any steps to do so. Thus, the accused miserably failed to challenge the signature in the cheque. In the above view of the matter, the courts below is justified in finding that the accused failed to rebut the presumptions under the N.I.Act which stood in favour of the complainant. There is no illegality in the said finding.

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 courts below had concurrently found that the complainant/1st respondent had successfully discharged initial burden of proving execution and issuance of the cheque; whereas the Revision Petitioner had failed to rebut the presumption under Section 118(a) and 139 of the N.I. Act which stood in favour of the 1st respondent. So also, it is found that the debt due to the 1st respondent was a legally enforceable debt and Ext.P1 cheque was duly executed and issued in discharge of the said debt.

7. This Court is satisfied that the courts below had meticulously evaluated the evidence on record. I do not find any kind of illegality or impropriety in the said findings or perversity in appreciation of evidence, from which the

above findings had been arrived. Therefore, I am not inclined to re-appreciate entire evidence once again and I confirm the concurrent findings of conviction.

8. At last, the learned counsel for the Revision Petitioner submits that the sentence imposed on the Revision Petitioner is disproportionate with the gravity and nature of the offence contemplated under Section 138 of the N.I. Act. The learned counsel further sought for sometime to pay the compensation, if this revision is found meritless as he is unable to raise the said amount forthwith due to paucity of funds.

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. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, 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 compensation of Rs.22,000/- (Rupees Twenty two thousand only) to the 1st respondent/complainant within a period of three months from today. If the petitioner had deposited any amount in the trial court in compliance with the interim order of this

Court or appellate court, the same shall be given credit to and the balance alone needs to be paid as compensation. In that event, the complainant is allowed to withdraw such deposit, if any.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 15th October, 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.

The Criminal Revision Petition is disposed of accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge