

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 19372

Crl.Rev.Pet.No. 484 of 2015 ()

**AGAINST THE JUDGMENT IN CRL.A 69/2014 of ADDL. SESSIONS COURT (SPL.
COURT), KOTTAYAM**

AGAINST THE JUDGMENT IN ST 17/2012 of J.M.F.C - II, CHANGANACHERRY

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**T.K.REMANAN
S/O.THANKAPPAN, KATTUMKAL HOUSE, PARAVOOR (P.O)
ALAPPUZHA DISTRICT.**

**BY ADVS.SRI.K.SHAJ
SRI.SAJJU.S
SRI.RENJIT GEORGE
SMT.ANJU MOHAN
SRI.S.K.SUJITH KRISHNA
SRI.S.VISHNU (ARIKKATTIL)**

RESPONDENT(S)/COMPLAINANT/STATE:

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

**2. D.KUPPU SWAMY
KAKKUZHY HOUSE, PERUNNA EAST, CHANGANACHERRY
KOTTAYAM - 686 101.**

R1 BY PUBLIC PROSECUTOR SMT. MADHU BEN

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 25-05-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

K.HARILAL, J.

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Crl.R.P.No.484 of 2015

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Dated this the 25th day of May, 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.69/2014 on the files of the Additional Sessions Judge-II (Special), Kottayam. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T.No.17/2012 on the files of the Judicial First Class Magistrate's Court-II, Changanacherry. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for six months and is directed to pay ₹ 1,50,000/- as fine. In default, to undergo simple

imprisonment for one month. If fine is realised, it shall be given to the complainant as compensation under Section 357(1)(b) Cr.P.C.

2. Though, this revision petition has been filed on various grounds, challenging the concurrent findings of the conviction and sentence, the learned counsel for the revision petitioner mainly focused on the point that the complainant himself in his deposition admitted that he had given amount to the accused on 03.07.2011. But, Ext.P1 cheque shows that the date of cheque is 03.01.2011. This evidence shows that the cheque was issued before the date on which the complainant had given ₹1,50,000/- to the accused.

3. I have meticulously considered this point in view of the discussion made by the Appellate Court in paragraph 15 of the impugned judgment passed in appeal. After appreciating the entire evidence on record, the learned Sessions Judge found that the date mentioned above as date of borrowal of money is a mistake only and it is discernible

from other evidence given by the complainant and the defence contentions.

4. Going by the judgment under challenge, it could be seen that to discharge the initial burden of proving execution and issuance of the cheque, the complainant had examined PWs.1 to 3 and marked Exts.P1 to P7. It is seen that with abundant caution, the complainant had made an attempt to prove the sources of money also. PWs.2 and 3 were examined as persons from whom he had obtained money for lending ₹1,50,000/- to the accused. I am of the opinion that one sentence of the deposition cannot be carved out and appreciated isolatedly so as to find out the bona fides and truth of the oral evidence. The entire evidence given by the complainant has to be appreciated cumulatively. It has come out in evidence through PW2 that Ext.P1 cheque was executed by the accused on a day after four months from the date of borrowal of the amount. He had witnessed the transaction as well as the execution of the cheque. The accused has not challenged the above

version of PW2 in his cross examination pointing out the deposition of PW1 that the cheque was issued on 03.07.2011.

5. More importantly, the specific defence set up by the accused is that he had borrowed an amount of ₹25,000/- from the complainant and issued blank signed cheque as a security. Thus, the borrowal of the amount and issuance of the cheque as blank cheque stands admitted. In view of the said admission, I am of the opinion that mistake in the date mentioned by the complainant in his evidence is of no consequence at all and the entire evidence adduced by the complainant in consonance with the date of execution of the cheque as a day after the borrowal of the amount cannot be thrown away as such on the basis of a mere slip of the tongue, when referring a date. Thus, the court below can be justified in finding that the date mentioned in the deposition is a mistake only.

6. 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.

7. The courts below had concurrently found that the complainant/2nd 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 2nd respondent. So also, it is found that the debt due to the 2nd respondent was a legally enforceable debt and Ext.P1 cheque was duly executed and issued in discharge of the said debt.

8. 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.

9. 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 some time to pay the fine as he is unable to raise the said amount forthwith due to paucity of funds.

10. Similarly, the substantive sentence imposed on the revision petitioner is too harsh and excessive. The learned counsel for the revision petitioner prayed for setting aside the sentence of imprisonment also. If the revision petitioner is incarcerated for a period as ordered by the courts below, the entire family will put in great hardship.

11. 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.

12. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, expressing willingness to pay the fine, I am inclined to grant 'five' months time to pay the fine. Similarly, the substantive sentence of imprisonment for six months will stand set aside and the revision petitioner will stand sentenced to undergo simple imprisonment for one day till rising of the court.

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 deposit fine of ₹ 1,50,000/- (Rupees One lakh Fifty thousand only) and the same shall be given to the 2nd respondent as compensation under Section 357(1)(b) Cr.P.C. within a period of five months from today.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 26th 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.

K.HARILAL, JUDGE.

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P.A to Judge

