

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

Crl.Rev.Pet.No. 4635 of 2006

AGAINST THE JUDGMENT IN CRL.A.NO. 259/2004 of ADDITIONAL
SESSIONS COURT (SPECIAL), KOTTAYAM DATED 28-11-2006

AGAINST THE JUDGMENT IN CC 7/2002 of J.M.F.C., VAIKOM
DATED 23/04/2004

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

JAYAKUMAR, S/O.PURUSHAN,
SREE NARAYANA MANDIRAM, THOTTAKOM P.O.,
THOTTAKOM KARA, THALAYAZHAM VILLAGE,
VAIKOM TALUK.

BY ADV. SRI.GEORGE SEBASTIAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE:

1. DEVI VILASOM KETTUTHENGU SANGHAM,
MUTTUCHIRA VILLAGE, VAIKOM TALUK,
REPRESENTED BY ITS SECRETARY KARUNAKARAN NAIR,
S/O. BHASKARAN NAIR, SOBHANA MANDIRAM,
EZHUMANTHURUTHU KARA, MUTTUCHIRA VILLAGE,
VAIKOM TALUK

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

R1 BY ADV. SRI.K.N.CHANDRABABU
BY ADV. SRI.P.M.NATESAN
R2 BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 28-07-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

"C.R"

K. HARILAL, J.

Crl.R.P. No.4635 of 2006

Dated this the 28th day of July, 2015

ORDER

The revision petitioner is the accused in C.C.No.7/2002 on the files of the Judicial First Class Magistrate's Court, Vaikom. The above complaint was filed by the first respondent herein alleging the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act'). The complainant's case is that the accused purchased coconuts from the complainant/Society and towards the price of the coconuts purchased upto July 2000, a sum of Rs.16,000/- was due from the accused to the Society and in discharge of the said debt, the accused issued Ext.P1 cheque in favour of the Secretary of the Society, Sri.

Karunakaran Nair and, when the cheque was presented for encashment, it was dishonoured and returned for want of sufficient funds. So also, despite the receipt of notice under Section 138(b), of the N.I. Act, the accused has not repaid the cheque amount.

2. After trial, the learned Magistrate found the revision petitioner guilty of the said offence and convicted thereunder. He was sentenced to undergo simple imprisonment for two months and to pay a compensation of Rs.18,000/- to the complainant under Section 357(3) of the Cr.P.C. and in default, to undergo simple imprisonment for 15 days. Though, he had challenged the conviction and sentence in Crl.A.No.259/04 before the Additional Sessions Court (Special), Kottayam, after re-appreciating the entire evidence on record, the learned Sessions judge also concurred with the verdict of guilty and confirmed the conviction; but modified the sentence. The substantive sentence of simple imprisonment for two

months was reduced and modified to simple imprisonment for one day till rising of the court and retained the rest of the sentence as such without any interference. The legality and propriety of the concurrent findings of conviction and modified sentence are under challenge in this revision petition.

3. Though, this revision petition is filed on various grounds challenging the concurrent findings of conviction and modified sentence on merits, the learned counsel for the revision petitioner mainly canvassed the point that the complainant/Society has no locus standi to file the present complaint alleging the dishonour of Ext.P1 cheque, which was issued in favour of one Karunakaran Nair, who represented the complainant Society. According to the learned counsel, the complainant is neither the payee nor the holder in due course. A complaint under Section 138 of the N.I. Act can be filed either by the payee or the holder in due course. In short,

Ext.P1 cheque is a personal cheque issued to Karunakaran Nair and not to the Society as contended by the complainant. Therefore, the complaint itself was not maintainable as the complainant had no locus standi to file such a complaint. But the court below miserably failed to consider the maintainability of the complaint under law.

4. Per contra, the learned counsel for the first respondent advanced arguments to justify the findings in the impugned judgments under challenge. The learned counsel for the first respondent submits that the complaint was filed on the basis of a resolution passed by the complainant/Society. Therefore, even though the payee in the cheque is Karunakaran Nair, the complainant/Society has locus standi to file the present complaint on dishonour of the cheque which was issued in favour of Karunakaran Nair. It is also contended that a complaint can be filed on the

dishonour of a cheque which was issued in discharge of any other liability also. In that view of the matter, the cheque issued in favour of Karunakaran Nair in discharge of the liability towards the Society is also maintainable.

5. I have given my anxious consideration to the submissions made at the Bar. The question that arises for consideration is, whether the complaint was maintainable or not? Put it differently, whether the complainant/Society has locus standi to file the complaint under Sec.138 read with Sec.142 or the N.I. Act on dishonour of a cheque, which was issued to the Secretary in his name, allegedly in discharge of a liability to the Society?

6. Going by the complaint, obviously, it is seen that the complainant is Devi Vilasam Kettuthengu Sangham and the Sangham is represented by its Secretary Sri.Karunakaran Nair. But going by Ext.P1 cheque, it is seen that the payee is one Karunakaran Nair. The case of the complainant is that, towards

the price of coconuts purchased from the complainant/Society, ₹16,000/- was due to the complainant/Society and in discharge of the said liability, the said cheque was issued. Therefore, the liability under the cheque was towards Devi Vilasom Kettuthengu Sangham and not towards Karunakaran Nair. But Ext.P1 cheque is seen issued in favour of Karunakaran Nair. It means that though, Karunakaran Nair represents the Society as the Secretary of the Society, the complainant is the Society.

7. Going by Sec.138 of the N.I. Act, the statutory language is that where any cheque drawn by a person on the account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or liability, is returned by the bank unpaid due to want of sufficient funds, he shall be deemed to have committed an offence and shall be punished

accordingly. In short, the cause of action enabling to file a complaint arises in favour of the payee when any cheque drawn by a person for payment of any amount to his favour is dishonoured for want of sufficient funds.

8. According to Sec.142 of the N.I. Act, notwithstanding anything contained in the Code of Criminal Procedure, 1973, no court shall take cognizance of any offence punishable under Sec.138 of the N.I. Act except upon a complaint, in writing, made by the payee or as the case may be, the holder in due course of the cheque. Thus, the payee or the holder in due course alone has the locus standi to file a complaint under Sec.142 of the N.I. Act.

9. The above view is further fortified by Sec.138(b) of the N.I. Act. According to Sec.138(b) of the N.I. Act, the payee or the holder in due course of the cheque, as the case may be, shall send a notice in writing, to the drawer of the cheque, within

thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. Thus, the sub-section (b) clarifies that the payee or the holder in due course alone has the right to proceed against the drawer for the commission of the offence under Sec.138 of the N.I. Act. According to Sec.7 of the N.I. Act, the person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called "payee". Similarly, according to Sec.9 of the N.I. Act, "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

10. The proposition that can be culled out from the mandatory language under Secs.142 and 138(b)

of the N.I. Act is that the locus standi to file a complaint under Sec.138 of the N.I. Act is given to the payee or holder in due course of the dishonoured cheque only and no court shall take cognizance of the offence punishable under Sec.138 of the N.I. Act, unless the complaint is filed by the payee or holder in due course of the dishonoured cheque.

11. When applying the above proposition in the instant case, indisputably, the payee is Karunakaran Nair and Devi Vilasom Kettuthengu Sangham, the complainant, is neither a payee nor a holder in due course. It follows that Devi Vilasom Kettuthengu Sangham has no locus standi to file a complaint alleging the dishonour of the cheque for want of sufficient funds which was issued in favour of Karunakaran Nair, the Secretary of the Society. It is true that Karunakaran Nair could have filed a complaint alleging that in discharge of the liability towards the Society, the cheque was issued in his favour as the Secretary of the Society, since the

cheque which was issued in discharge of any other liability also would come under the penal consequences referred to under Sec.138 of the N.I. Act. But, here there is no such case. The authorisation made or the resolution passed by the Society to the Secretary of the Society to receive the cheque in his name does not confer him the status of either payee or holder in due course so long as the cheque stands drawn in the name of the Secretary. It follows that the trial court should not have taken cognizance on the complaint, which was filed by a person other than payee or the holder in due course. Needless to say, the trial court should have dismissed the complaint at the threshold itself, on maintainability in view of Sec.142 of the N.I. Act for want of locus standi. The courts below miserably failed to consider the right or locus standi of the complainant in its correct perspective in view of Secs.138 and 142 of the N.I. Act.

12. Therefore, I find that the conviction and

sentence imposed on the revision petitioner on a complaint which was not maintainable is unsustainable under law. Consequently, the impugned judgment passed by the trial court and confirmed by the appellant court would stand set aside and the petitioner is acquitted of the offence under Sec.138 of the N.I. Act.

This revision petition is allowed.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge