

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

Crl.Rev.Pet.No. 526 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 719/2010 of II
ADDITIONAL SESSIONS COURT,TRIVANDRUM DATED 4/4/2015.

AGAINST THE JUDGMENT IN CC 29/2006 of J.M.F.C.-III,
TRIVANDRUM DATED 14/9/2010.

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

GRACEAMMA THOMAS,
ADVOCATE, VASANTHA BUILDING, ATHANI ROAD,
VANCHIYOOR, THIRUVANANTHAPURAM.

BY ADVS.SRI.T.S.RAJAN
SMT.MAREEJA MOOSA
SRI.K.ABDUL HAKEEM

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

1. VIJAYAKRISHNAN,
VRINDAVANAM, KAZHUNADU, VATTAPPARA,
THIRUVANANTHAPURAM-695 028.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
COCHIN-682031.

R2 BY PUBLIC PROSECUTOR SMT. MADHU BEN

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 22-05-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.526 of 2015

Dated this the 22nd 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.719 of 2010 on the files of the II Additional Sessions Judge, Thiruvananthapuram. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.29 of 2006 on the files of the Judicial First Class Magistrate's Court-III, Thiruvananthapuram. According to the impugned judgment, the Revision Petitioner is sentenced to

undergo imprisonment for one day till rising of the court. The accused shall pay ₹1,25,000/- to the complainant as compensation under Sec.357(1) of the Cr.P.C. In default, the accused shall undergo simple imprisonment for a period of 6 months.

2. The complainant's case is that the accused borrowed an amount of ₹2,24,000/- from the complainant and in discharge of the said liability, five cheques dated 7/3/1999, drawn on the Central Bank of India, were issued and out of that cheques, two cheques dated 7/3/1999 for ₹50,000/- each are the cheques involved in this case. The above two cheques are marked as Exts.P1 series. In short, Ext.P1 series cheques were issued in discharge of ₹1,00,000/-, out of ₹2,24,000/-.

3. In defence, the accused contended that she is a practising lawyer at Thiruvananthapuram Bar and one Mr.Vijayan, who was working in KSFE, Pettah Branch as Assistant Manager, is her classmate and

friend. The said Vijayan requested the accused to arrange suitable person to grant loan of ₹2,00,000/- for 60% interest. Thereupon, the accused introduced one Ambikakumari, who had been doing textile business to the said Vijayan for advancing the loan. Thereafter, during 1998 May, the complainant and the above said Vijayan reached her residence and Ambikakumari also reached there. The complainant handed over ₹2,00,000/- to Ambikakumari and Ambikakumari issued a blank signed cheque in their favour. But, subsequently, Ambikakumari failed to pay the interest, as promised by her. When the interest to be paid by the said Ambikakumari became arrear, the complainant and the above said Vijayan trespassed into the house of the accused and thrown away the cheque issued by Ambikakumari before the accused. Thereafter, they insisted for issuance of the cheques by the accused on the accusation that they have given the money to Ambikakumari at the

direction of the accused. The further version of the accused, in evidence, is that when she refused to give the cheques, the complainant and the above said Vijayan threatened her by saying that her six year old son would be killed. Thus, under duress, she issued four cheques for ₹50,000/- each and one cheque for ₹24,000/-.

4. Going by the impugned judgment, it could be seen that Ext.D8(a), the relevant page showing entry of the complaint lodged by the accused complaining the alleged threat, culminated in the issuance of the cheque, produced by the accused herself shows that the said story of issuance of the cheque, under alleged the duress, does not find a place in the complaint lodged by the accused. Thus, she miserably failed to prove the circumstances under which, according to her, she issued the cheque. It goes a long way to prove the complainant's case that the cheques were issued in discharge of a legally enforceable debt. That

apart, admittedly, the petitioner is a practising lawyer. She should have definitely made a complaint in writing to the nearby Police Station, if there was an occurrence of threatening by which the accused obtained cheques for ₹2,24,000/-. The falsity of the defence version further gets assurance from the non-examination of the said Ambikakumari, who had an active role in the transaction alleged by the accused. The reason for non-examination is a matter known to the accused only. Further, the said Vijayan, who had been examined as D.W.3, admitted the fact that he is familiar with the accused being his classmate; but he has not supported the defence case. Another important aspect is that if there was a threat to kill the six year old son of the accused, if she refuses to give the cheque, certainly, being a practising lawyer, she should have moved the law in motion to address her grievance. In short, the accused miserably failed to improbabilise the complainant's case or to

probabilise her defence version. The defence set up by the accused is highly improbable, impossible and unbelievable. Thus, the accused miserably failed to rebut the presumption under Secs.139 and 118(a) of the N.I. Act which stood in favour of the complainant.

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 series cheques were 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 Sec.138

of the N.I. Act. The learned counsel further sought for some time to pay the compensation 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, expressing willingness to pay the compensation, I am inclined to grant six 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 and the same shall concurrently along with the substantive sentence of imprisonment for one day imposed in Crl.R.P.Nos.524 and 525 of 2015.

ii. The Revision Petitioner shall pay ₹1,25,000/- (Rupees One lakh and twenty five thousand only) to the 1st respondent as compensation under Sec.357(3) of the Cr.P.C. within a period of six 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 23/11/2015 with sufficient proof to show payment of compensation.

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

The Criminal Revision Petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge