

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

CRL.REV.PETNO. 535 OF 2015 (B1)

**AGAINST THEJUDGMENT IN CRL.A 147/2013 OF II ADDL. SESSIONS COURT,
THIRUVANANTHAPURAM DATED 12-03-2015
AGAINST THE JUDGMENT IN ST 946/2009 OF J.F.C.M. COURT-I,VARKALA DATED 05-03-2013**
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REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**SUDHEER
S/O.SIVADASAN, DAS MANDIRAM, KALLARA P.O
THIRUVANANTHAPURAM.**

BY ADV. SRI.LIJU. M.P

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & NON-PARTY:

**1. SREE GOKULAM CHITS & FINANCE COMPANY PVT. LTD.
VARKALA BRANCH- 695 141,
REP.BY ASSISTANT BUSINESS MANAGER .**

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

R2 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 21-
05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

OKB

K.HARILAL, J.

Cr1.R.P. No.535 of 2015

Dated this the 21st day of May, 2015.

O R D E R

1.The revision petitioner is the accused in S.T. No.946/2009 on the files of the Judicial First Class Magistrate's Court-I, Varkala. He was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, the 'Act') on a complaint filed by the first respondent herein. 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 one day till rising of the court and to pay Rs.2,59,725/-as compensation with 9% interest from the date of Ext.P7 cheque till realisation, in default of which to undergo simple imprisonment for six months more. The amount, if realised, shall be given to the complainant under Section 357(1) of the Cr.P.C. Feeling aggrieved,

though the accused had challenged the verdict of guilt in Crl.A.No.147/2013 before the court of II Additional Sessions Judge, Thiruvananthapuram, after re-appreciating the evidence on record, the learned Sessions Judge also concurred with the findings of the trial court and affirmed the conviction and modified the sentence. In modification of the sentence passed by the trial court the accused was given one month time to pay the amount of compensation and he was directed to appear before the court below on 13/1/2015 to undergo the substantive sentence. The rest of the sentence was sustained as such without any interference. The legality and propriety of the concurrent findings of conviction and the proportionality of the sentence imposed on the revision petitioner are under challenge in this revision petition.

2. The learned counsel for the revision petitioner advanced arguments challenging the concurrent findings of conviction and sentence. The learned counsel mainly canvassed two points. Firstly, the learned counsel contended that P.W.1 was not competent to adduce evidence in support of the complainant's case as he was the Power of Attorney only. In the complaint, there is no explicit assertion as to the knowledge of the Power of Attorney holder about the transaction in question. So, in view of the decision in *Narayanan v. State of Maharashtra* [2013 (4) KLT 21 (SC)], the court below ought to have found that the complaint was not maintainable and the evidence of P.W.1 could not have been relied upon to base conviction.

3. Going by the evidence on record, it could be seen that the original complaint was filed by the Assistant Manager of the first respondent company

and he was the person who had transacted with the accused in the chitty transaction. But, subsequently, at the time of evidence he was not available and the Power of Attorney holder was examined as P.W.1 to prove the complainant's case.

4. I am of the view that since the original complaint was filed by the Assistant Manager who represented the company and had directly involved in the transaction, specific assertion as to particulars of original transaction was not required in the complaint. Thus, the facts of the instant case are distinguishable from the facts of the case in which the above decision was rendered. The proposition laid down by the Hon'ble Supreme Court in Narayanan's case (supra) is applicable to the complaint filed by the Power of Attorney holder only and the said proposition cannot be applied to a case where the complaint was filed by the officer of

the company who had involved in the transaction or who had direct knowledge of the transaction. Therefore, the first point raised by the learned counsel for the revision petitioner stands rejected.

5. Secondly, it is contended that no document had been produced to show that there was a legally enforceable debt in connection with the chitty transaction. Going by the impugned judgment, it is seen that the petitioner has admitted that Ext.P1 cheque was drawn on the account maintained by him with his bank and the signature shown in Ext.P1 cheque is his signature. He himself admitted that he had a chitty transaction with the complainant company. But the cheque in question was issued only as a security at the time of joining the chitty. After analysing the evidence, the court below observed that no iota of evidence was available in support of this contention. The accused received

the notice of demand in this case in time. But no reply had been sent suggesting the defence raised during the course of trial and there lacks bona fides of the accused.

6. As regards the initial burden of proving the execution and issuance of the cheque, the Power of Attorney holder was examined as P.W.1 and Exts.Pl to P7 were marked. In a proceeding under Section 138 of the N.I. Act, the cause of action arises when the accused fails to pay the cheque amount within the specified time only after receipt of the notice. The Apex Court has already considered the question whether all the particulars of original transaction must be averred in the complaint. In the decision in *Devan v. Krishna Menon* [2010 (2) KLT 397], this Court held that the complainant need not aver all the particulars of the original transaction and produce documents pertaining to the entire transaction.

7. Going by the impugned judgment, it could be seen that, though P.W.1 was examined at length, nothing was brought out to discredit his evidence and the court below concurrently placed reliance on the evidence of P.W.1 coupled with Exts.P1 to P7. Thus, the complainant has successfully discharged the initial burden of proving the execution and the issuance of the cheque. In the above view of the matter, it was not incumbent upon the complainant to produce documents pertaining to the chitty transaction with the petitioner. In the above view, the second point also stands rejected.

8. The scope of enquiry and interference under revisional jurisdiction are very limited confining to the legality, propriety and correctness. I do not find any kind of illegality or impropriety in the impugned judgment under challenge. So also, there is no perversity in the appreciation of evidence.

This Court is not inclined to re-appreciate evidence on record unless any kind of perversity in the appreciation of evidence or illegality or irregularity or impropriety in the findings are pointed out. The revision petitioner has not raised any other point warranting interference under the revisional jurisdiction. This revision petition is devoid of merits and dismissed accordingly.

9. The learned counsel for the revision petitioner further submits that the petitioner is unable to pay the compensation as he is suffering from acute financial crisis. The learned counsel urged for some time to pay the compensation. Having regard to the nature and gravity of the offence under Section 138 of the N.I. Act, the petitioner is given one month time to pay the compensation. Consequently, in supersession of the sentence imposed by the trial court court and modified by

the Appellate Court, the revision petitioner will stand sentenced as follows:

- i. The revision petitioner shall undergo simple imprisonment for one day till rising of the court.
- ii. He shall pay a compensation of Rs.2,59,725/- (Rupees Two lakhs fifty nine thousand seven hundred and twenty five only) to the first respondent/complainant, under Section 357 (3) of the Cr.P.C., within a period of one month from today.
- iii. He shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 22/6/2015 with sufficient proof to show payment of compensation.
- iv. In default, he shall undergo simple imprisonment for a period of four months.

This Criminal Revision Petition is disposed of as above.

Sd/-
K. HARILAL, JUDGE

okb.