

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

Crl.Rev.Pet.No. 1544 of 2008

AGAINST THE JUDGMENT IN CRL.A.NO. 387/2007 of SESSIONS
COURT, KOTTAYAM DATED 31-01-2008

AGAINST THE JUDGMENT IN CC 709/2005 of J.M.F.C.,
ERATTUPETTA DATED 15-05-2007

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

ANTONY, S/O.CHACKO, KAINACKAL HOUSE,
KONDOOR VILLAGE, THIDANADU KARA.

BY ADV. SRI.PMM.NAJEEB KHAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

1. JAMES MATHEW @ SIBI, S/O.MATHEW,
PARANKULANGARA HOUSE, PERUNILAMKARA, ERATTUPETTA.

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

R1 BY ADV. SMT.R.BINDU SASTHAMANGAL
R2 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 18-09-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No. 1544 of 2008

Dated this the 18th day of September, 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.387/07 on the files of the Sessions Judge, Kottayam. The above appeal was filed challenging the judgment whereby the Revision Petitioner was found guilty of the said offence, passed in C.C.No.709/05 on the files of the Judicial First Class Magistrate's Court, Erattupetta. According to the impugned judgment, the Revision Petitioner is sentenced to pay a fine of ₹40,000/- and in default of

payment of fine, he has to undergo simple imprisonment for a period of two months. If the fine amount is realised, the entire amount will be given to P.W.1/the complainant as compensation under Sec.357(1) of the Cr.P.C.

2. The case of the complainant is that the accused borrowed an amount of Rs.40,000/- from the complainant and in discharge of the said liability, the accused had drawn and issued Ext.P1 cheque for the said amount and when he presented the said cheque for encashment, the same was dishonoured and returned for want of sufficient funds. Though, he had caused to issue a lawyer's notice demanding the cheque amount and the accused received the said notice; he did not repay the cheque amount; nor did he send a reply notice denying the liability.

3. To discharge the initial burden, the complainant was examined as P.W.1 and Exts.P1 to P6 were marked. On an appraisal of the aforesaid evidence, the courts below concurrently found that the

complainant had successfully discharged the initial burden to prove, execution and issuance of the cheque and thereby, the presumptions under Secs.139 and 118(a) of the N.I. Act would stand in favour of the complainant. I do not find any reason to disbelieve or discard the above findings made by the courts below.

4. To rebut the presumptions which stood in favour of the complainant, no evidence either oral or documentary had been adduced by the accused. But the stand taken by the accused, when he was examined under Sec.313 of the Cr.P.C., is that in the year 2004, he had borrowed a sum of Rs.10,000/- from the complainant and for the repayment of that loan amount, as security, he had given a signed blank cheque and the said cheque was converted to Ext.P1 cheque to prosecute him frivolously and vexatiously. Thus, the execution and issuance of the cheque is seen virtually admitted though it was contended that the same was on a different transaction. It is pertinent to note that no evidence had been adduced either to

probabilise the defence version or improbabilise the complainant's case, at least, that the standard of preponderance of probabilities. In the absence of any kind of evidence, the courts below are justified in finding that there is no illegality or impropriety or any kind of perversity in any of the findings whereby the accused was found guilty of the offence under Sec.138 of the N.I. Act.

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 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.

7. 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 fine amount. Consequently, this Revision Petition will stand disposed of subject to the following terms.

- i. The Revision Petitioner shall pay a

fine of Rs.40,000/- (Rupees Forty thousand only) within a period of three months from today and the same shall be given to the 1st respondent/complainant as compensation under Sec.357(1)(b) of the Cr.P.C.

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

The Criminal Revision Petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge