

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

Crl.Rev.Pet.No. 630 of 2015 ()

**AGAINST THE JUDGMENT IN CRA 513/2012 of ADDL. DISTRICT & SESSIONS COURT -
IV, THIRUVANANTHAPURAM DATED 02-03-2015**

**AGAINST THE JUDGMENT IN ST 1261/2007 of JUDICIAL FIRST CLASS MAGISTRATE
COURT-II,THIRUVANANTHAPURAM DATED 20-10-2012**
.....

REVISION PETITIONER(S)/APPELLANT/ACCUSED :

**K.SUGATHAN,
S/O.KUMARAN, MULLIYIL VEEDU, AVANAVANCHERY P.O.,
ATTINGAL, THIRUVANANTHAPURAM.**

**BY ADVS.SMT.M.SANTHI (K/868/2011)
SRI.G.RANJU MOHAN**

RESPONDENT(S)/RESPONDENT/COMPLAINANT :

- 1. C.K.UPENDRAN,
S/O.KRISHAPANIKKAR, BHAVANA,
PUTHUVAL PUTHEN VEEDU,
VALLAKADAVU P.O., KAMALESWARAM,
THIRUVANANTHAPURAM - 695 008.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

RS BY SMT.MADHU BEN, PUBLIC PROSECUTOR

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 27-05-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:**

AMV

K.HARILAL, J.

.....
Crl.R.P.No. 630 of 2015 ()

.....
Dated this the 27th 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.513 of 2012 on the files of the Addl. District & Sessions Judge-IV, Thiruvananthapuram. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in ST No.1261 of 20076 on the files of the Judicial First Class Magistrate's Court-II, Thiruvananthapuram. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for one day till rising of the court and to pay to the complainant Rs.2,00,000/- together with interest @ 9% per annum from 21.05.2007 till realisation as compensation under Section 357(3) of the Cr.P.C. In default of payment of

compensation, the accused shall undergo simple imprisonment for four months.

2.The specific case of the complainant is that in order to discharge legally enforceable debt, the accused executed and issued a cheque dated 21.05.2001 in favour of the complainant drawn on Canara Bank, Attingal Branch and when the complainant presented the cheque for encashment, the said cheque was dishonoured and returned for want of 'sufficient funds'. Per contra, the specific case pleaded by the petitioner is that, he has no money transactions with the complainant and he borrowed an amount of Rs. 50,000/- from one Anil Kumar and issued a blank signed cheque to said Anil Kumar. But the said Anil Kumar had retained the cheque and did not give it back to the complainant demanding exorbitant interest for the borrowed amount. According to the petitioner, the cheque leaf, which was given to Anil Kumar is misutilised the cheque by the complainant in this case

and this complaint is filed using that cheque.

3.Going by the impugned order, it could be seen that in the cross-examination of PW1, the suggestion was made by the counsel for the petitioner highlighting the said defence and PW1, the complainant emphatically denied the same contention was taken by the petitioner when he was questioned under Section 313 of Cr.P.C also. But no further evidence had been adduced to substantiate the defence at least with the standard of preponderance of probability in Johnson Zachariah v. State of Kerala [2006 (4) KLT 290], this Court held that an admission of signature in the cheque goes a long way to prove the due execution and possession of the cheque by the complainant similarly gives a long way to prove the issuance of the cheque. Thus, the petitioner has miserably failed to substantiate how the cheque happened to be in the possession of the complainant. According to Gultan P. Dalal v. Balendranath Banerjee [2001 SWC 3861], it is obligatory if a complainant had

successfully discharged initial burden of proving and execution of a cheque, it is obligatory on the court to rise presumption in every case, where the factual basis for raising the presumption had been established. This court in Kumar Exports v. Sharma Carpets [2009 (1) KLT 197 SC] held that bare denial of consideration and existence of a debt and mere suggestions denying the liability during the cross examination are not sufficient to rebut the presumption under Section 139 and 118A of the Negotiable Instrument Act, 1881. Something probable has to be brought out on record for getting the burden of proof prior shifted to the complainant. In view of the above decisions, I find that there is no illegality or impropriety in impugned order under challenge.

4.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.

5.The courts below had concurrently found that the complainant/1st respondent had successfully discharged the 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 cheque was duly executed and issued in discharge of the said debt.

6.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 at. Therefore, I am not inclined to re-appreciate entire evidence once again and I confirm the concurrent findings of conviction.

7. 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 compensation as he is unable to raise the said amount forthwith due to paucity of funds.

8. 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 v. 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.

9. 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.
- ii. He shall pay a compensation of Rs.2,00,000/- together with interest @ 9% per annum from 21.05.2007 till realisation as compensation to the 1st respondent/complainant, under Section 357(3) of Cr.P.C., within a period of six months from today.

iii. He shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 27.11.2015 with sufficient proof to show payment of Rs.2,00,000/-.

iv. In default, he shall undergo simple imprisonment for a period of three months.

The Criminal revision petition is disposed of accordingly.

Sd/-
K.HARILAL,
JUDGE.

AMV/01/06/

/TRUE COPY/

P.A.TO JUDGE