IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

Crl.Rev.Pet.No. 686 of 2015 ()

CRL.A 96/2014 of I ADDL. SESSIONS COURT,KOTTAYAM DIVISION
ST 4889/2013 of J.M.F.C.-II(MOBILE),KOTTAYAM

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REVISION PETITIONER/APPELLANT/ACCUSED:

SURESH V.P @ KUNJUMON
VAZHAYIL HOUSE, S.H MOUNT P.O, PERUMBAYIKADU VILLAGE,
KOTTAYAM.

BY ADV. SRI.S.NIDHEESH

RESPONDENT(S)/RESPONDENTS/ STATE AND COMPLAINANT:

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

2. BERNARD N.MARTIN,
PROPRIETOR, PEOPLES TRUST COMPANY, BAKERY JUNCTION,
KOTTAYAM-686 001.

R1 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 08-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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K.HARILAL, J.

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Crl.R.P. No.686 of 2015

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Dated this the 8th day of June, 2015.

<u>O R D E R</u>

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.96/2014 on the files of the court of the I Additional Sessions Judge, Kottayam Division. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in S.T.C.No.4889/2013 on the files of the Judicial First Class Magistrate's Court-II (Mobile), Kottayam. According to the impugned judgment, the revision petitioner was sentenced to pay only fine of Rs.4,79,000/-and in default to undergo simple imprisonment for three months. The fine amount, if realised, was ordered to be given to the complainant as compensation under Section 357(3) of the Cr.P.C.

2. The case of the complainant is that he is the proprietor of 'People Trust Company' which is engaged in the business of money lending and the accused is a borrower to whom he had lent Rs.2,95,000/- by way of loan for purchasing machineries and equipments in his workshop. In discharge of the said liability he had issued a cheque for Rs.3,30,400/- to the complainant. When he presented the said cheque for encashment, the same was dishonoured and returned for want of sufficient funds.

3. Per contra, in defence, the accused contended that he had availed of a loan for Rs.5,000/- only from the complainant and at that time he had given a signed blank cheque and signed blank paper affixed with a stamp. After five months he had repaid the entire amount which he had availed of from the complainant. When he asked the complainant to return the signed cheque and stamp paper, the complainant told him that he would give them.

4. The learned counsel for the revision petitioner advanced arguments assailing the findings whereby the court below concurrently found that the accused is guilty of the offence under Section 138 of the N.I. Act. The learned counsel points out that the complainant miserably failed to prove that Rs.3,30,400/- was due to him from the accused. Secondly, he himself admitted that the cheque was filled up by one of his staffs and he was not examined in evidence. According to the learned counsel, the court below ought to have believed that the accused had availed of a loan for Rs.5,000/- only as contended by him and he had repaid that amount.

5. The scope and extent of jurisdiction and power under Sections 397 and 401 of the Cr.P.C. are very limited and confined to examination of legality, propriety and correctness of the findings of the courts below. In exercise of revisional jurisdiction, this Court is not inclined to re-appreciate the entire evidence on record. Unless it is shown that the

appreciation of evidence is tainted with perversity, this Court cannot interfere with the findings of the courts below to arrive at a finding other than the findings rendered by the courts below concurrently. With this yardstick, I have examined the contentions raised by the learned counsel for the revision petitioner.

6. As regards the initial burden of proving the execution and issuance of the cheque, the complainant was examined as P.W. 1 and Exts.P1 to P9 were marked. Ext.P2 is the debt acknowledgement as on 31.11.2006, Ext.P8 is the cash book and Ext.P9 is the copy of the ledger. The settled legal position is that in a complaint under Section 138 of the N.I. Act, in Johnson v. Scaria [2006 (1) KLT 34], this Court held that "It is not the burden on the complainant as in other cases, so long as the presumption under Section 139 stands, to plead, to prove and establish the original transaction/original consideration to discharge the liability in which the cheque is issued. But in the instant case, with abundant caution, the complainant

has produced Ext.P2 debt acknowledgement memo, Ext.P8 copy of cash book and Ext.P9 copy of ledger. That apart, the complainant was examined as P.W. 1 and the courts below concurrently observed that even though he was examined at length and into minute details, nothing brought out to discredit his version and the accused miserably failed to improbabilise the prosecution case or to probabilise his case in evidence. Therefore, I find that the complainant has successfully discharged his initial burden of proving execution and issuance of the cheque.

7. Coming to the second contention that the person who had filled up the cheque was not examined evidence, this Court in Lillykutty v. Lawrance [2003 (3) KLT 721] held that no law provides that body of the cheque has to be written by drawer only in his own handwriting. What is material is signature of the drawer only and not the body of the instrument. It is the specific case of the complainant that he had handed over a blank signed cheque and thus issuance and signature of the cheque are admitted. In

Bhaskaran Nair v. Abdul Kareem [2006 (4) KLT 48], this Court held that the defence that a signed blank cheque was handed over by an account holder is intrinsically suspicious one and must be appreciated with great care and caution. No account holder is expected to deal with a cheque in such a casual, careless, irresponsible and indifferent manner and such a defence is impossible. In Bhaskaran Nair's case (supra) this Court further held that by handing over a signed blank cheque, the drawer of the cheque conveys an implied consent to the payee to fill up the cheque and present for encashment. Therefore, even if the cheque was filled up by one of the employees of the complainant, it is of no consequence at all, particularly, when the revision petitioner miserably failed to rebut the presumption under Sections 139 and 118(a) of the N.I. Act, which stood in favour of the complainant. There is no illegality or impropriety in the impugned judgment under challenge. I do not find any kind of perversity in the appreciation of evidence.

8. The learned counsel for the revision petitioner

further cited Joseph v. State of Kerala [2009 (3) KLT SN 28] and Purushothaman Nair v. Sreekantan Nair[2013 (3) KLT SN 118]. Going by the above judgments, it could be seen that the initial burden of proof cannot be discharged lightly by contending that signed blank cheque was given to the complainant in discharge of the debt. But the legal position is well settled by the Apex Court in Rangappa v. Mohan [2010 (2) KLT 682 (SC)]. The Apex Court held that the presumption under Section 139 of the N.I. Act includes the existence of a legally enforceable liability. In view of the legal position well settled by the Apex Court in Rangappa's case (supra), I find that the decisions cited by the learned counsel for the revision petitioner have no application in the instant case, particularly, when the complainant has succeeded in proving the existence of a legally enforceable debt by producing Ext.P2 debt acknowledgement memo, Ext.P8 cash book and Ext.P9 copy of the ledger.

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 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.

10. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submissions made at the Bar, I am inclined to grant six months time to pay the fine. Consequently, this revision petition will stand disposed of subject to the following terms:

i. The revision petitioner shall pay a fine of Rs.4,79,000/- (Rupees Four lakhs and seventy nine thousand only) within a period of six months from today and the same shall be given to the 2nd respondent/complainant as compensation under Section 357(3) of the Cr.P.C.

ii. 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

okb.