

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

Crl.Rev.Pet.No. 2061 of 2010 ()

AGAINST THE ORDER/JUDGMENT IN CRA 6/2007 of ADDL. DISTRICT COURT (ADHOC
2), THRISSUR DATED 07-06-2010

AGAINST THE ORDER/JUDGMENT IN ST 2896/2003 of J.M.F.C.-III, THRISSUR
DATED 07-12-2006

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

P.L.BABU, S/O. LONAPPAN,
PAYYAPPILLY HOUSE, PUTHUR, THRISSUR DISTRICT.

BY ADV. SRI.P.SANTHOSH (PODUVAL)

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. C.P.GEORGE, S/O POULOSE,
CHIRAYATHU HOUSE, PUTTHUR, THRISSUR.

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

R1 BY ADV. SRI.K.B.GANGESH
R BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
03-09-2015, THE COURT ON 15/9/2015 PASSED THE FOLLOWING:

SUNIL THOMAS, J.

Crl.R.P.No. 2061 of 2010

Dated this the 15th day of September , 2015

O R D E R

The sole accused who stands convicted for an offence punishable under Section 138 of the Negotiable Instruments Act is the revision petitioner herein. The case of the complainant before the court below was that the accused had borrowed a sum of Rs.1,50,000/- from the complainant in the year 2002. When the amount was demanded, he executed and delivered a cheque dated 28/5/2003, which on presentation was returned dishonoured on the ground of insufficiency of funds. Ext.P3 notice was issued which was replied by Ext.P5, raising untenable contentions. Hence, the complaint was laid alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act.

2. Before the court below, the accused pleaded not guilty and demanded trial. On the side of the

complainant, he was examined as PW1 and Exts.P1 to P5 were marked. The accused was examined as DW1 and the witness was examined as DW2. On his side, Exts.D1 to D3 were marked. The court below, on an evaluation of the available materials, concluded that the complainant has succeeded in proving the case and found the accused guilty. He was convicted and sentenced to undergo imprisonment till the raising of the court and to pay a compensation of Rs.1,55,000/- to the complainant under Section 357(3) of Crl.P.C. with a default clause. This was challenged in appeal before the Additional District & Session Judge, Thrissur, who by judgment dated 7/6/2007 confirmed the conviction and sentence.

3. This is challenged in this revision on the ground that both the courts below committed serious error in evaluating the evidence and arrived at legally unsustainable conclusion. Heard and examined the records.

4. The complainant relied on his evidence as PW1 to hold the allegation against the accused. Ext.P1 was the cheque which, according to him, was issued towards the

discharge of legally recoverable debt. He relied on Exts.P1 to P5 to prove that the cheque was presented for collection, returned dishonoured and that in spite of notice the amount was not paid.

5.The defence set up by the accused as is discernible from the trend of cross examination, the evidence tendered by him as DW1 and the reply given by him in Ext.P5 as well as in the questioning under Section 313 of Cr.P.C. discloses that he had set up a case of total denial. According to him, he had borrowed a sum of Rs.20,000/- from the complainant on 14/3/1999. At the time of receipt of consideration, blank signed cheque and blank signed papers were received by the complainant. The entire amount with exorbitant interest was repaid over a long period of time, but in spite of that, cheque was not returned. Using one blank signed paper, his son had instituted a suit against the accused as well as his wife. To prove this allegation, he summoned the son of the de-facto complainant, and got him examined as DW2. However, he did not support the case set up by the accused.

6. The learned counsel for the revision petitioner

vehemently contended that the court below wrongly concluded that the execution of the cheque was proved. According to him, the specific plea in the complaint, as seen in paragraphs 1 and 5, was that the accused delivered the cheque dated 28/5/2003 for a sum of Rs.50,000/- at the residence of the complainant. The learned counsel contended that it was specifically indicated that the cheque bearing date and amount was delivered at the house. However, in the course of cross examination of PW1, he admitted that the amount and date alone were written by the accused and the name of the payee and the amount in words were written by PW1. He had explanation that it was at the instance of the accused. In the course of examination he admitted that the figure, date, amounts etc. were in the same ink. Relying on this oral testimony, the learned counsel for the accused contended that this contradicts the specific plea in the complaint that the accused had handed over a filled up cheque brought to the house of the complainant and delivered it to him. However, a close perusal of the specific plea in the complaint discloses that

the writing by the accused specifically referred to the date and the amount in figures alone. A clear conclusion cannot be arrived at on the pleading that the complainant had a case that all the entries in the complaint were filled up by the accused himself. In the light of specific pleading that the cheque dated 28/5/2003 for Rs.1,50,000/- was delivered at the house, it can only indicate that the date and the amount in figures alone were filled up. The complainant has a case that the accused had studied only up to 6th standard which is admitted by DW1. In this background, the admission by PW1 that the name of the payee and the amount in words were written by him does not contradict his own version in the complaint. In other words, the complainant does not specifically say that all the entries were filled up by the accused himself. This contention was also raised before both the courts below, which considered the issue elaborately and uniformly arrived at a conclusion in favour of the complainant .

7.The evidence on record indicates that the son of the complainant had a loan transaction with the accused and his

wife, for a sum of the Rs.50,000/- on the strength of promissory note. When PW1 was cross examined, he was questioned about this transaction, to which he feigned ignorance. On the other hand, DW2, the son deposed that he had given the amount to the accused without the knowledge of his father, but admitted that father knew about the transaction. It was suggested by the accused that the above promissory note was one manipulated by the son, using a blank signed paper handed over to the de facto complainant. It was further contended that he did not have sufficient income at that time when he advanced a huge amount, since he was a student at that time. DW2 in his cross examination admitted that he was studying during the year 2002. However, he claimed that he was doing a side business of vanilla and coconuts and used to earn about Rs. 1-1½ lakhs per year. It is true that regarding the transaction, though PW1 has feigned ignorance, DW2 stated that the father was aware of the transaction, which is evidently a contradiction.

8. In Ext.D3 reply, the accused as well as his wife denied the transaction with the son of the complainant. DW2 admitted the suggestion that pursuant to Ext.D3 reply, no

litigation was initiated since no money was due to him. However, it was clarified in the cross examination that the money due as per the promissory note was repaid. Learned counsel relied on this confession and submitted that this casts serious doubt on the version of PW1.

9. On the basis of the above factual aspects, learned counsel contended that the courts below have thoroughly gone wrong in appreciating the evidence and thereby committed a material irregularity. It is to be noticed that these contentions were advanced before the courts below also. Except the inconsistency referred to in para 7 above, no major inconsistency in evidence is seen. Both the courts have consistently appreciated the facts elaborately and arrived at a conclusion which cannot be said to be perverse or that, on the given set of facts, such a conclusion is not possible. Two courts having appreciated the facts uniformly and arrived at a conclusion based on the factual situations mentioned above, it cannot be stated in revision that the Courts have gone wrong. Hence, I am not inclined to interfere in the concurrent findings of the Courts in the absence of anything to show that the Courts have committed gross irregularity or illegality.

The revision fails and it is dismissed.

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge