

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

Crl.Rev.Pet.No. 889 of 2015 ()

CRL.A 207/2013 of ADDL.SESIONS COURT-IV, KOTTAYAM

CC 23/2011 of J.M.F.C.-II, VAIKOM

REVISION PETITIONER/APPELLANT/ACCUSED:

SHAJI, AGED 47 YEARS

S/O THANKAPPAN, KARITHARA HOUSE, THANEERMUKKOM P.O.
CHERTHALA TALUK.

BY ADV. SMT.R.SUDHA

RESPONDENTS/RESPONDENTS/STATE AND COMPLAINANT:

1. STATE OF KERALA

REPRESENTED BY PUBLIC PROSECUTOR

HIGH COURT OF KERALA, ERNAKULAM, PIN:682 031.

2. PRAJITH

S/O PRASANNAN, THARAYIL HOUSE, KUDAVECHOOOR P.O.
VAIKOM TALUK-686 144.

R2 BY ADVS. SMT.SARITHA THOMAS

SRI.SAJEEVAN KURUKKUTTIYULLATHIL

R1 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 23-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No.889 of 2015

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Dated this the 23rd day of July, 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.207/2013 on the files of the Additional Sessions Judge-IV, Kottayam. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.23/2011 on the files of the Judicial First Class Magistrate's Court-II, Vaikom. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for one day till rising of the court and to pay a compensation of ₹50,000/- to the complainant under Section 357(3) Cr.P.C

and in default, to undergo simple imprisonment for two months.

2. The complainant's case is that the complainant and accused are known to each other. In July, 2010, accused demanded an amount of ₹50,000/- from the complainant and on 01.08.2010, the complainant gave the amount to the accused. In discharge of the said liability, the accused issued Ext.P1 cheque dated 4.9.2010 for an amount of ₹50,000/- drawn on the account maintained by him with Sherthallay Co-operative Urban Bank Limited, Thanneermukkom Branch to the complainant. When he presented the cheque for encashment, the same was dishonoured for want of sufficient funds. Though he caused to issue a lawyer's notice demanding the cheque amount, the accused did not make any payment and thereby committed the offence punishable under Section 138 of the N.I.Act.

3. When the accused was questioned under Section

313 of the Cr.P.C., he denied all the incriminating circumstances put to him. He filed an additional statement wherein he stated that he had no money transaction with the complainant. On 20.3.2010, he borrowed an amount of ₹25,000/- from one Sabeesh Raju, Vechoor. At that time, he had entrusted two signed blank cheque leaves and a signed blank stamp paper as security with him. He had repaid a total amount of ₹17,750/- in daily instalments of ₹250/- to the said Sabeesh Raju. Since the balance amount was not paid, the present complaint was lodged through the complainant by misusing the blank signed cheque leaves.

4. Coming to the evidence on record, to discharge the initial burden of proving execution and issuance of the cheque, the complainant was examined as PW1 and Exts.P1 to P5 were marked. After evaluating the said evidence, the court below found that the complainant has successfully discharged the initial burden of proving execution and issuance of the cheque and thereby the presumptions under

the N.I.Act would stand in favour of the complainant.

5. What remains to be considered is, whether the accused had succeeded in rebutting the said contention. DWs.1 and 2 were examined and Ext.D1 Pass Book was marked. DW1 is the said Sabeesh Raju, with whom, the accused entrusted the blank signed cheque leaves, according to the accused. But when he was examined, he denied the case put forward by the accused. After verifying Ext.D1 Pass Book, the court below observed that on a perusal of Ext.D1, it can be seen that there is nothing in it to connect DW1 or the alleged transaction. Curiously, while DW1 was in the box, no such suggestion was put to him and Ext.D1 was not shown to him, though he contended that the entries in Ext.D1 were made by none other than DW1.

6. Moreover, the accused himself deposed that the cheque which was given to DW1 was drawn on Thanneermukkom Urban Co-operative Society. But, Ext.P1

cheque is one drawn on Sherthallay Co-operative Urban Bank, Thanneermukkom Branch. In the above view of the matter, the court below is justified in finding that the accused miserably failed to rebut the presumption which stood in favour of the complainant. I do not find any illegality or impropriety in any of the findings. I do not find any kind of perversity in the appreciation of evidence.

7. 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.

8. The courts below had concurrently found that the

complainant/2nd respondent had successfully discharged 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 2nd respondent. So also, it is found that the debt due to the 2nd respondent was a legally enforceable debt and Ext.P1 cheque was duly executed and issued in discharge of the said debt.

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

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

11. 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.

12. 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 'four' 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. The Revision Petitioner shall pay a compensation of Rs.50,000/- (Rupees Fifty thousand only) to the 2nd respondent/complainant under Section 357(3) of the Cr.P.C within a period of four months from today. If the petitioner had deposited any amount in the trial court in compliance with the interim order of this Court or appellate court, the same shall be given credit to and the balance alone needs to be paid as compensation.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 24th November, 2015 with

sufficient proof to show payment of compensation .

iv. 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.A to Judge