

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

Crl.Rev.Pet.No. 900 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 385/2012 of ADDITIONAL
SESSIONS COURT - IV, KOTTAYAM DATED 10-02-2015.

AGAINST THE JUDGMENT IN ST 1980/2009 of J.M.F.C.-I,
KOTTAYAM DATED 27-11-2012

REVISION PETITIONER/APPELLANT/ACCUSED:

AJMAL, AGED 40 YEARS,
S/O.LATE P.K.MOHAMMED, PROPRIETOR,
BHARAT CEMENTS AND STEELS, PARANANIL HOUSE,
ERATTUPETTA P.O., KOTTAYAM-686121.

BY ADVS.SRI.A.P.SUBHASH
SRI.DAVID JOHN

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

1. STATE OF KERALA,,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.

2. SREE GOKULAM CHITS AND FINANCE CO.LTD.,
CENTRAL OFFICE AT NO.66, ARCOT ROAD, KODAMPAKKOM,
CHENNAI, BRANCH OFFICE AT PRAKKATTIL BUILDING,
1ST FLOOR, CENTRAL JUNCTION, KOTTAYAM-1,
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER
K.N.RAJESH.

R2 BY ADV. SRI.K.S.BABU

R2 BY ADV. SMT.N.SUDHA

R1 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 28-07-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No. 900 of 2015

Dated this the 28th 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.385 of 2012 on the files of the Additional Sessions Judge-IV, Kottayam. The above appeal was filed challenging the judgment whereby the Revision Petitioner was found guilty of the said offence, passed in S.T.C. No.1980 of 2009 on the files of the Judicial First Class Magistrate's Court-I, Kottayam. According to the impugned judgment, the Revision Petitioner is sentenced to simple

imprisonment for one day till rising of the court and to pay a compensation of ₹9,59,897/- to the complainant under Sec.357(3) of the Cr.P.C. and in default of payment of compensation, to undergo simple imprisonment for six months.

2. The complainant's case is that the accused is the subscriber of kuries in the chitty conducted by the complainant and when the repayment of the amount received from the complainant defaulted, the accused, in discharge of the said debt, issued Ext.P12 cheque for an amount of ₹9,59,897/- to the complainant. When the cheque was presented for encashment, the same was dishonoured for want of sufficient funds. To prove the execution and issuance of the cheque, the complainant and one witness were examined as P.Ws.1 and 2 and Exts.P1 to P16 were marked. After considering the above, the court below found that the complainant successfully discharged the initial burden of proof. I do not find any reason to interfere

with the said finding, particularly when Exts.P8 to P11 documentary evidence disclose the legally enforceable liability under the cheque.

3. What remains to be considered is whether the accused succeeded in rebutting the presumptions under Secs.118(a) and 139 of the N.I. Act. To rebut the presumptions, the accused was examined as D.W.1. When examined as D.W.1, the accused asserted that only an amount of ₹65,000/- was due from him to the complainant and at the time of accepting the chitty amount, the accused had issued three blank signed cheques to the complainant and one among the said cheques was converted to Ext.P12 and misused for prosecuting the accused. But, except the oral assertion of the accused, no evidence has been brought out to probabalise the defence version. That apart, the evidence adduced by the complainant would improbabilise the contentions put forward by the accused. Therefore, the court below is justified in

finding that the accused has miserably failed to rebut the presumptions under Secs.118(a) and 139 of the N.I. Act.

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/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.P12 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. 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 Sec.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, if this revision petition is found liable to be dismissed.

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 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.

9. 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 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 ₹9,59,897/- (Rupees Nine lakhs fifty nine thousand eight hundred and ninety seven only) to the 2nd respondent/complainant as compensation within a period of six months from today under Sec.357(3) of the Cr.P.C.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 28/01/2016 with sufficient proof to show payment of compensation.

iv. In default, the Revision Petitioner shall undergo simple imprisonment for a

period of six months.

v. If he had deposited any amount in the trial court towards compensation or fine, the same shall be given credit to and the balance alone needs to be paid as compensation or fine, as the case may be, and in that event, the complainant is allowed to realise such deposit from the court.

The Criminal Revision Petition is disposed of accordingly.

(K. HARILAL, JUDGE)

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