

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYAISHTA, 1937

Crl.Rev.Pet.No. 1264 of 2013

AGAINST THE JUDGMENT IN ST 1567/2008 of J.F.C.M - VI,
ERNAKULAM DATED 25-07-2012.

AGAINST THE JUDGMENT IN CRL.A.NO. 592/2012 of III
ADDITIONAL SESSIONS COURT, ERNAKULAM, DATED 29-01-2013.

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

MANOJKUMAR K.R.,
KARIMATTOM HOUSE, S.H.MOUNT P.O., PERUMBAIKADU,
KOTTAYAM DISTRICT, PIN 680 006.

BY ADV. SRI.AYPE JOSEPH

RESPONDENT(S)/RESPONDENTS/STATE/COMPLAINANT:

1. M/S. DBFS SECURITIES LTD.,
11/947, SMART CENTRE, MKK NAIR ROAD,
VAZHAKALA, KOCHI - 21 REP. BY ITS
AUTHORISED OFFICER SRI.JOHNKUTTY JAMES,
S/O.V.S.JAMES JOSEPH, MANAGER,
M/S.DBFS SECURITIES LTD.,
11/947, SMART CENTRE, MKK NAIR ROAD,
VAZHAKALA, KOCHI - 21.

2. STATE OF KERALA, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.

R1 BY ADV. SRI.GEO PAUL
BY ADV. SRI.SANU MATHEW
BY ADV. SRI.C.R.PRAMOD
BY ADV. SRI.S.ASHOK KUMAR.
BY ADV. SRI.R.VINU RAJ
BY ADV. SMT.P.M.HRIDYA

R2 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 12-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.1264 of 2013

Dated this the 12th day of June, 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.592 OF 2012 on the files of the III Additional Sessions Judge, Ernakulam. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T.No.1567 of 2008 on the files of the Judicial First Class Magistrate's Court-VI, Ernakulam. According to the impugned judgment, the Revision Petitioner is sentenced to pay a fine of

₹2,50,000/- under Sec.138 of the N.I. Act. The fine amount, if realised, the entire amount shall be paid to the complainant as compensation under Sec.357(1)(b) of the Cr.P.C. In default of payment of fine, the accused is sentenced to undergo simple imprisonment for a period of three months.

2. The main point raised in this revision petition is that the revision petitioner had no transaction with the Ernakulam Branch of the Company which presented the cheque for encashment and he had the transaction with the Kottayam Branch only to which he had issued the cheque.

3. The learned counsel for the 1st respondent, per contra, submitted that the entire transactions all over the Kerala is controlled by the Ernakulam Branch and the cheque which was given to the Kottayam Branch was sent to the Ernakulam Branch for collection and the Ernakulam Branch presented the cheque for encashment and got dishonoured.

4. Going by the impugned judgment, it is seen

that, admittedly, both branches represent the complainant M/s DBFS Securities Ltd., to whom the cheque was issued. That means, the cheque was issued in favour of M/s DBFS Securities Ltd., a company having so many branches in Kerala. As far as the complainant is concerned, the complainant is a company having a single legal entity. Therefore, the fact that the cheque was given to the Kottayam Branch and the same was presented for encashment by the Ernakulam Branch does not make any difference as regards the status of the complainant is concerned. So long as the cheque is issued in the name of the company, any branch of the company can present the cheque for collection and the branch which presented the cheque for collection is of no consequence at all. Therefore, I find that the contention that the cheque was presented to the Kottayam Branch and presented for encashment by the Ernakulam Branch does not make any impact on the legal validity and entitlement of encashment of

the cheque. Therefore, the said contention raised by the learned counsel for the revision petitioner would stand rejected.

5. 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.

6. The courts below had concurrently found that the complainant/1st 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 1st respondent. So also, it is found that the debt due to the 1st respondent was a legally enforceable debt and Ext.P4 cheque was duly executed and issued in discharge of the said debt.

7. 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.

8. 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, in case this revision petition is dismissed.

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 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 the submission made at the Bar, I am inclined to grant six months time to pay the compensation. In modification of the sentence imposed by the appellate court, the revision petitioner will stand sentenced as

follows:

i. The Revision Petitioner shall pay a fine of ₹2,50,000/- (Rupees Two lakhs and fifty thousand only) within a period of six months from today and the same shall be given to the 1st respondent as compensation under Sec.357(1)(b) of the Cr.P.C.

ii. In default, the Revision Petitioner shall undergo simple imprisonment for a period of three months.

iii. If the revision petitioner had deposited any amount, in compliance with the interim order of this Court, the same shall be given credit to and the balance needs to be paid as fine.

The Criminal Revision Petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge