

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

Crl.Rev.Pet.No. 998 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 253/2014 of II
ADDITIONAL SESSIONS COURT,TRIVANDRUM DATED 14-07-2015

AGAINST THE JUDGMENT IN ST 279/2010 of J.M.F.C.-IV,
NEYYATTINKARA DATED 26-06-2014

REVISION PETITIONER(S)/APPELLANT:

SOPHIYA DAVID,
D/O. MARY LOOBOY,
ANJANEYA APARTMENT, ARA 62, ANJALI NAGAR,
PALLIMUKKU, KANNAMMOOLA, THIRUVANANTHAPURAM.

BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN

RESPONDENT(S)/RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.

2. SYED MUHAMMED YOOSUF,
JYOTHI NILAYAM, ALUMMOODU, KADAVATTARAM DESOM,
NEYYATINKARA VILLAGE, THIRUVANANTHAPURAM-695 121.

R2 BY ADV. SRI.R.ANILKUMAR
R1 BY PUBLIC PROSECUTOR SRI.JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 19-08-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.998 of 2015

Dated this the 19th day of August, 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.253 of 2014 on the files of the II Additional Sessions Judge, Thiruvananthapuram. The above appeal was filed challenging the judgment whereby the Revision Petitioner was found guilty of the said offence, passed in S.T. No.279 of 2010 on the files of the Judicial First Class Magistrate's Court-IV, Neyyattinkara. According to the impugned judgment,

the Revision Petitioner was sentenced to undergo simple imprisonment for one day till rising of the court and the accused shall pay a fine of ₹85,000/- and the same shall be paid to the complainant as compensation under Sec.357(1) of the Cr.P.C. In default, the accused shall undergo simple imprisonment for a period of two months.

2. The complainant's case is that the accused borrowed ₹85,000/- from him and in discharge of the said liability, he has drawn and issued Ext.P1 cheque for the said amount and when he presented the same for encashment, the same was dishonoured and returned for the reason that 'account closed'. Though he had caused to issue a lawyer's notice, the same was returned with an endorsement 'unclaimed'. To discharge the initial burden, the complainant was examined as P.W.1 and Exts.P1 to P6 were marked. On an appraisal of the aforesaid evidence, the courts below concurrently found that the complainant has

successfully discharged the initial burden and thereby the presumptions under Secs.118(a) and 139 of the N.I. Act would stand in favour of the complainant. To rebut the presumptions, one witness was examined as D.W.1 and Ext.X1 was also marked as court exhibit.

3. In defence, the petitioner contended that he has no money transaction with the complainant and Ext.P1 cheque was issued to one Nusaiba when her mother had dealings worth ₹30,000/- with the said Nusaiba. For the security of the said transaction, one blank signed cheque was handed over to the said Nusaiba; but even though her mother discharged the liability, the said Nusaiba has not returned the cheque given to her as security. To substantiate the said contention, no evidence, either oral or documentary, has been adduced, except the contentions raised in 313 statement.

4. Going by the judgment passed in appeal, it is seen that the petitioner has contended that notice

under Sec.138(b) of the N.I. Act was not issued in his correct address. To substantiate the said contention, the Post Master of the Medical College Post Office was examined as D.W.1. After analysing the evidence of D.W.1, the court below arrived at a finding that when D.W.1 was examined, the material point as to which post office limit 'Anjaneya Apartments' comes was not asked. Contrary to the evidence of D.W.1, when the Postal Assistant of Pettah Post Office was examined as P.W.2, he deposed that during re-examination, the said Anjali Nagar is within the limit of Pettah Post Office where the petitioner is residing within the limits of that post office. Thus, the evidence of P.W.2 is sufficient to arrive at a finding that even though Ext.X1 letter was tendered by giving intimation, the petitioner has not received the same. In that context, Ext.P5 was returned with an endorsement 'unclaimed'. I do not find any perversity in the appreciation of evidence. In this analysis, the courts below are

justified in finding that the accused failed to rebut the presumptions which stood in favour of the complainant.

6. 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.

7. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and

submission made at the Bar, I am inclined to grant five 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 ₹85,000/- (Rupees Eighty five thousand only) to the 2nd respondent/complainant as compensation under Sec.357(3) of the Cr.P.C. within a period of five months from today.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 19/1/2016 with sufficient proof to show payment of compensation.

iv. In default, the Revision Petitioner shall undergo simple imprisonment for a period of one month.

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.

vi. Warrant, if any pending in execution of the sentence imposed on the revision petitioner, shall be kept in abeyance for a period of five months from today.

The Criminal Revision Petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge