

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

Crl.Rev.Pet.No. 1045 of 2015 ()

AGAINST THE JUDGMENT IN CRL.A 500/2014 of III ADDL. SESSIONS
JUDGE, ERNAKULAM DATED 12-06-2015

AGAINST THE JUDGMENT IN ST 4607/2011 of ADDL.C.J.M. (EO) ,
ERNAKULAM DATED 23-10-2014

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REVISION PETITIONER/APPELLANT/ACCUSED:

1. M/S E-DS SOLUTIONS PVT LTD
28, 66-C PAVANA, K.P.VALLON ROAD
KADAVANTHRA, KOCHI-682020.

2. MR. JOSE MANNULIL
MANAGING DIRECTOR, M/S.E-DS SOLUTIONS PVT LTD.,
28, 66-C PAVANA, K.P.VALLON ROAD, KADAVANTHRA
KOCHI-682020.

BY ADVS.SRI.PHILIP J.VETTICKATTU
SRI.B.PREMNATH (E)

RESPONDENTS/RESPONDENTS/COMPLAINANT:

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

2. HDFC BANK LTD.,
MATHER SQUARE, OPP. NORTH RAILWAY STATION,
ERNAKULAM,PIN:682018, REP. BY ITS LEGAL MANAGER,
MR.MANOJ V.KRISHNAN.

R1 BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 21-08-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

OKB

K.HARILAL, J.

Crl.R.P. No.1045 of 2015

Dated this the 21st day of August, 2015.

O R D E R

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.500/2014 on the files of the court 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.4607/2011 on the files of the court of the Additional Chief Judicial Magistrate (Economic Offences), Ernakulam. According to the impugned judgment, the first accused was convicted and sentenced to pay a fine of Rs.1,00,000/-. If the fine amount is not remitted, the same would be realised from the properties of the first accused. The

second accused is sentenced to pay a fine of Rs.1,00,000/- and in default, to undergo simple imprisonment for three months. If the fine amount is recovered, the same shall be given to the complainant as compensation under Section 357(1)(b) of the Cr.P.C.

2. The complainant's case is that the accused availed a loan from the complainant company as per loan agreement No.14862086 and towards the discharge of the said liability the accused issued Ext.P1 cheque for Rs.80,781/- dated 25.7.2011 to the complainant and when he presented the cheque for encashment, the same was dishonoured and returned on the reason that 'account closed'. Despite the receipt of notice issued under Section 138(b) of the N.I. Act, the accused neither sent a reply nor repaid the amount. Thus, they have committed the offence punishable under Section 138 of the N.I. Act.

3. To discharge the initial burden, the power of attorney holder of the complainant was examined as P.W.1 and Exts.P1 to P7 were marked to prove the dishonour of the cheque and the statutory compliance under Sections 138(b) and 142 of the N.I. Act. After

evaluating the evidence on record, the courts below concurrently found that the complainant has successfully discharged the initial burden and thereby the presumptions under Section 139 and 118(a) of the N.I. Act would stand in favour of the complainant. I do not find any perversity in the appreciation of evidence.

4. What remains to be considered is, whether the accused has succeeded in rebutting the said presumptions. No positive evidence, either oral or documentary, had been adduced by the accused. The courts below specifically observed that, though P.W.1 was elaborately cross examined, nothing was brought out to discredit his testimony regarding the execution of Ext.P1 cheque by the accused in favour of the complainant. During cross examination, the accused maintained the contention that Ext.P1 is a signed blank cheque issued by the accused to the complainant as security at the time of availing loan from the complainant and the said cheque was presented for collection before the bank after making unauthorised entries in the cheque. Thus, the signature in the

cheque is seen admitted. The legal position well settled by the Supreme Court in Kumar Exports v. Sharma Carpets [2009 (1) KLT 197 (SC)], is that bare denial of the execution of the cheque is not sufficient to rebut the presumptions under the N.I. Act. The lack of bona fides in the said contention is further supported by failure on the part of the accused to send a reply denying the liability and stating the above contention. The above view is further supported by the decision of this Court reported in Yohannan v. Sabu [2012 (3) KLT SN 31]. There is no illegality or impropriety in any of the findings and I do not find any perversity in the appreciation of evidence.

5. The learned counsel for the Revision Petitioners 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 Petitioners 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 them. Further, the revision petitioners contended that the sentence imposed on them is disproportionate with the nature and gravity of the offence. The learned counsel prayed for some time to pay compensation, if this revision petition is found meritless and liable to be dismissed.

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 v. 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. In view of the above decisions, the revision

petitioners are given some time to pay the fine. In modification of the sentence imposed by the trial court and confirmed by the appellate court, the revision petitioners will stand sentenced as follows:-

- i. The first revision petitioner shall pay a fine of Rs.1,00,000/- within a period of six months from today. If the fine amount is not remitted, the same will be realised from the properties of the first revision petitioner as per law.
- ii. The second revision petitioner is sentenced to pay a fine of Rs.1,00,000/- within a period of six months from today and the same shall be given to the complainant as compensation under Section 357(1)(b) of the Cr.P.C.
- iii. In default, the second revision petitioner shall undergo simple imprisonment for three months.
- iv. The fine amount of Rs.1,00,000/- is to be realised either from the first revision petitioner or from the second revision petitioner, whichever is earlier. If the first revision petitioner has remitted the fine amount, then the second revision petitioner has no liability to pay the fine and vice versa.

The criminal revision petition is disposed of as above.

Sd/-
K. HARILAL, JUDGE

okb.