

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 21ST DAY OF OCTOBER 2015/29TH ASWINA, 1937

Crl.Rev.Pet.No. 1350 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 254/2014 of ADDITIONAL
SESSIONS COURT - V, PALAKKAD DATED 24-08-2015

AGAINST THE JUDGMENT IN CC 281/2011 of J.M.F.C.,ALATHUR
DATED 19-06-2014

REVISION PETITIONERAPPELLANT/ACCUSED:

VYDHYANATHAN, AGED 46 YEARS,
S/O. BALAN MASTER, SAROJINI NIVAS,
NAYARTHARA, VADAKKENCHERRY,
ALATHUR, PALAKKAD.

BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL)

RESPONDENTS/RESPONDENTS/STATE AND COMPLAINANT:

1. SURENDRAN, AGED 37 YEARS,
S/O. MADHAVAN, KALATHIL VEEDU,
KALAVAPPADAM, KIZHAKKENCHERRY,
ALATHUR, PALAKKAD-678 541.
2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM-682 031.

R2 BY PUBLIC PROSECUTOR SRI. R.GITESH

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 21-10-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.1350 of 2015

Dated this the 21st day of October, 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.254/2014 on the files of the V Additional Sessions Judge, Palakkad Division. The above appeal was filed challenging the judgment whereby the Revision Petitioner was found guilty of the said offence, passed in C.C.No.281/2011 on the files of the Judicial First Class Magistrate's Court, Alathur. According to the impugned judgment, the Revision Petitioner stands sentenced to undergo simple

imprisonment for one day till rising of the court and also directed to pay compensation of ₹85,000/- to the complainant under Sec.357(3) of the Cr.P.C. In default, to undergo simple imprisonment for a period of three months.

2. The complainant's case is that the accused borrowed a sum of ₹80,000/- from him and in discharge of the said liability, he had drawn and issued Ext.P1 cheque for the said amount and when he presented the cheque for encashment, the same was dishonoured and returned for want of sufficient funds. Despite the receipt of the notice issued under Sec.138(b) of the N.I. Act, the accused has not paid the cheque amount; nor send a reply denying the liability. Thus, he has committed the offence punishable under Sec.138 of the N.I. Act.

3. To discharge the initial burden, the complainant was examined as P.W.1 and Exts.P1 to P4 were marked. After evaluating the aforesaid evidence available on record, the courts below concurrently

found that the complainant has successfully discharged the initial burden to prove, execution and issuance of the cheque and thereby, the presumptions under Secs.138 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 adduced by the complainant.

4. What remains to be considered is, whether the accused has succeeded in rebutting the said presumptions under Secs.139 and 118(a) the N.I. Act which stood in favour of the complainant.

5. Going by the impugned judgment, it is seen that no evidence either oral or documentary had been adduced by the accused. When examined under Sec.313 of the Cr.P.C., he admitted the signature in the cheque; but contended that Ext.P1 cheque lacks consideration. He further contended that he has no acquaintance with the complainant or even saw him; but he miserably failed to substantiate the circumstances under which his signed cheque

happened to be in the possession of the complainant. In *Johnson Scaria v. State of Kerala* [2006 (4) KLT 290], this Court held that admission of signature in a cheque goes a long way to prove the execution of the cheque and possession of the cheque by the complainant goes a long way to prove issuance of the cheque. In the absence of any suggestion as regards the circumstances by which the cheque happened to be in the possession of the complainant, it could reasonably be presumed that the cheque was issued in discharge of a liability, as contended by the complainant. I do not find any kind of perversity in the appreciation of evidence and there is no illegality or impropriety in any of the findings in the impugned judgment under challenge.

6. 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.

7. At last, the learned counsel for the petitioner sought for six months time to pay the compensation, if this revision petition is found meritless.

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 facts and circumstances of this case and the nature and gravity of the offence under the N.I. Act, in the light of the decisions quoted above, the revision petitioner is given five months time to pay the compensation. Consequently, in modification of the modified sentence imposed by the appellate court, the petitioner will stand sentenced as follows:

i. The Revision Petitioner shall undergo simple imprisonment for one day till rising of the court.

ii. The Revision Petitioner shall pay compensation of ₹85,000/- (Rupees Eighty five thousand only) to the complainant/1st respondent within a period of five 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 21/3/2016 with sufficient proof to show payment of compensation.

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

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge