

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 193

Crl.Rev.Pet.No. 1339 of 2014 (B2)

AGAINST THE JUDGMENT IN CRL.A 142/2011 of III ADDL. DISTRICT &
SESSIONS COURT, THRISSUR DATED 21-06-2014

AGAINST THE JUDGMENT IN CC 652/2009 of J.F.C.M.COURT,
WADAKKANCHERY DATED 08-02-2011

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

SAUDAMINI, AGED 54 YEARS,
W/O. SASIDHARAN, THAIVALAPPIL HOUSE, MINALLUR VILLAGE,
THALAPPILLY TALUK.

BY ADV. SRI.C.A.ANOOP

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. UNNIKUTTAN T.G.,
S/O. GOVINDAN, THATTANPURAKKAL HOUSE,
MULLURKKARA VILLAGE,
KANJIRASSERY DESOM - 680 655.

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

R1 BY ADV. SRI.P.SANTHOSH (PODUVAL)
R1 BY ADV. SMT.R.RAJITHA
R1 BY ADV. SRI.K.D.SREEVISAKH
R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 06-07-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

OKB

K.HARILAL, J.

Crl.R.P. No.1339 of 2014

Dated this the 6th day of July, 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.142/2011 on the files of the court of the III Additional District & Sessions Judge, Thrissur Division. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in C.C.No.652/2009 on the files of the Judicial First Class Magistrate's Court, Wadakkanchery. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for one day

till rising of the court and to pay a fine of Rs.80,000/- and in default to undergo simple imprisonment for one month. The fine amount, if realised, was directed to be paid to the complainant as compensation under Section 357(1)(b) of the Cr.P.C.

2. The case of the complainant is that the accused borrowed a sum of Rs.80,000/- from the complainant and in discharge of the said liability the accused issued a cheque dated 19.3.2009 in favour of the complainant. When the cheque was presented for encashment, the same was dishonoured and returned for want of sufficient funds. Though the accused caused to issue a lawyer notice, the accused has not paid the amount, but sent a reply stating false contentions. Per contra, while cross examining the complainant as P.W.1, the accused suggested that the pay order portion of the cheque is altered materially and thereby the amount shown in the cheque is not the actual amount for which the cheque was issued. But going by Ext.P6 reply notice, the specific case put forward by the

accused is that her husband borrowed an amount of Rs.10,000/- from the complainant in the year 2005 and at that time a signed blank cheque was issued to the complainant as a security and subsequently this signed blank cheque was converted to Ext.P1 cheque with an amount of Rs.80,000/- and the same is misused for prosecuting the complainant.

3. Learned counsel for the revision petitioner advanced arguments assailing the findings whereby the courts below concurrently found that the accused miserably failed to rebut the presumption under Sections 139 & 118(a) of the N.I. Act, which stood in favour of the complainant. The thrust of the argument advanced was that though the pay order portion of Ext.P1 cheque was altered materially by the complainant himself, the court below has not taken the said irregularity in its correct perspective. In support of the above argument, the learned counsel further submits that admission of signature is not equivalent or synonymous with admission of execution.

Therefore, even if the signature found in Ext.P1 is the signature of the accused, admission of that signature alone is not sufficient to constitute execution of the cheque. To fortify the said argument, the learned counsel for the revision petitioner cited Ramachandran v. Dinesan [2005 (1) KLT 353], Govindaraj & Co. v. The Nedungadi Bank Ltd. [2003 (2) KLT SN 69 (C.No.91) Mad.] and Starline Agencies v. R.B. Agencies [2006 (3) KLT 485].

4. The short question that arises for consideration is whether the complainant has succeeded in proving the execution and issuance of the cheque and whether the cheque is altered materially in a way so as to affect the genuineness of the execution of the cheque. Going by Ext.P6 reply notice, it is the specific case of the accused that she herself issued Ext.P1 cheque as a signed blank one towards security for the discharge of an amount of Rs.10,000/- borrowed by her husband from the complainant and, though the said amount was repaid, the complainant has retained

the cheque and misused for prosecuting her. It is pertinent to note that the signature in Ext.P1 cheque is not denied by the accused. Her only allegation is that the pay order portion and the amount was written by the complainant himself. In this context, the decisions of this Court in Lillykutty v. Lawrance [2003 (3) KLT 721] and Bhaskaran Nair v. Abdul Kareem [2006 (4) KLT 48] are significant. In Lillykutty's case (supra), this Court held that mere fact that the payee's name and amount shown are not in the handwriting of the drawer does not invalidate the cheque and no law provides that entire body of the cheque has to be written by the drawer only in his own handwriting. What is material is signature of the drawer only and not the body of the instrument. In Bhaskaran Nair's case (supra), this Court further held that the defence that a signed blank cheque was handed over by an account holder is intrinsically suspicious one and must be appreciated with great care and caution. No account holder is expected to deal with a cheque in

such a casual, careless, irresponsible and indifferent manner and such a defence is impossible.

5. In view of the said decisions, I hold that as far as the cheque issued under the N.I. Act is concerned, the signature is significant and material and the body of the instrument pales to insignificant, when the signature in the cheque stands admitted. More particularly, in Ext.Pl cheque, there is no correction in the numerical portion where the amount is written. The correction is confined to the inscription of 'Rs.80,000/-' only.

6. Secondly, the bank has no case that the cheque is materially altered and has no doubt as regards the genuineness or credibility of the cheque. When the numerical portion is correct, the bank did not insist that the pay order portion must be corrected by the complainant himself. Though the revision petitioner has contended that the cheque was issued as a security when an amount of Rs.10,000/- was borrowed from the complainant by her husband and the same was paid off,

no evidence was adduced to substantiate the said transaction. Going by the decision in Bindu v. Sreekantan Nair [2007 (1) KLT 525], it is seen that, this Court has held that, admission of signature is not synonymous with admission of execution. I have no disagreement with the said proposition held by this Court. But, this Court, in Johnson Scaria v. State of Kerala [2006 (4) KLT 290], held that admission of signature goes a long way to the execution of the cheque and the possession of the cheque in the hands of the complainant goes a long way to the issuance of the cheque. Therefore, the decisions cited by the learned counsel for the revision petitioner do not render any help to fortify the argument canvassed before me. In this analysis, I find that the corrections are not material alterations so as to invalidate the cheque, as contended by the accused. There is no illegality or impropriety in the impugned judgments under challenge.

7. Learned counsel for the revision petitioner

submits that the substantive sentence of simple imprisonment imposed on the revision petitioner is excessive, harsh and disproportionate with the nature and gravity of the offence. So also, the learned counsel sought for some time to pay the fine. The learned counsel for the first respondent submits that a reasonable time can be given to the revision petitioner to pay the fine payable as compensation.

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 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.

9. In the light of the decisions referred above, I find that the substantive sentence of simple imprisonment imposed on the revision petitioner is not in conformity with the proposition laid down by the Supreme Court as quoted above and it is disproportionate with the nature and gravity of the offence.

10. Therefore, the substantive sentence of simple imprisonment for three months will stand reduced and modified to simple imprisonment for one day till rising of the court and the revision petitioner is given three months time to pay the fine.

11. Consequently, in supersession of the sentence imposed by the trial court and modified by the appellate court, the revision petitioner will stand sentenced as follows:

- i. The revision petitioner shall undergo simple imprisonment for one day till rising of the court.

- ii. She shall pay a fine of Rs.80,000/- (Rupees Eighty thousand only) within a period of three months from today and the same shall be given to the complainant/first respondent as compensation under Section 357(1)(b) of the Cr.P.C.
- iii. She shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 06.10.2015 with sufficient proof to show payment of fine.
- iv. In default, she shall undergo simple imprisonment for one month.
- v. If the revision petitioner had deposited any amount in the trial court, in compliance with the direction of this Court or appellate court, that amount shall be given credit to and the balance alone need be paid as fine. In that event, the first respondent/complainant is allowed to realise such deposit, if any.

This criminal revision petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.