

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

Crl.Rev.Pet.No. 4231 of 2008

AGAINST THE JUDGMENT IN CRL.A.NO. 449/2004 of ADDITIONAL
SESSIONS JUDGE, FAST TRACT COURT NO.II, PALAKKAD DATED
31-10-2008

AGAINST THE JUDGMENT IN ST 236/2000 of C.J.M.PALAKKAD
DATED 20-08-2004

REVISION PETITIONER(S)/APPELLANT:

N. KRISHNAKUMAR @ UNNI,
CHIEF EXECUTIVE, M/S. KIRIDOM RELEASE,
COTTON HILLS,
THIRUVANANTHAPURAM.

BY ADV. SRI.K.P.BALAGOPAL

RESPONDENT(S)/RESPONDENTS:

1. REMYA ADVERTISING, THROUGH ITS
MANAGING PARTNER SUNDAR KUMAR,
S/O. PANKAJAKSHAN NAIR, NAINAN'S BUILDING,
METTUPALAYAM STREET, PALAKKAD.

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

R1 BY ADV. SRI.K.R.VINOD

R2 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 16-07-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. 4231 No. of 2008

Dated this the 16th day of July, 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.449 of 2004 on the files of the Additional Sessions Judge, Fast Track Court No.II, Palakkad. The above appeal was filed challenging the judgment whereby the Revision Petitioner was found guilty of the said offence, passed in S.T.No.236 of 2000 on the files of the Chief Judicial Magistrate's Court, Palakkad. According to the impugned judgment, the Revision Petitioner stands sentenced to undergo simple imprisonment for three months and to pay a

fine of Rs.50,000/- and in default, to undergo simple imprisonment for a further period of three months. If the fine amount is realised, the entire fine amount will be paid to the complainant as compensation under Sec.357(1)(b) of the Cr.P.C.

2. The complainant's case is that the complainant is a partnership firm represented by its Managing Partner and is engaged in the business of placing advertisements in the newspapers, magazines etc. The accused is the producer of a film by name 'Millennium Stars'. The accused and the complainant entered into Ext.P7 agreement for effecting advertisements regarding the said film and consequent on the said agreement, the complainant had effected advertisements in the newspapers, magazines etc., towards the payment of amount payable to the first respondent. In the above said transaction, the accused drawn and issued Ext.P1 series of cheques, cheque dated 5/3/2000 for

Rs.30,225/- and cheque dated 13/3/2000 for Rs.47,604/-. When the complainant presented the said cheques for encashment, the same were dishonoured and returned for want of sufficient funds. Though the complainant had caused to issue a lawyer's notice, the accused neither paid the cheque amount; nor sent a reply denying the liability. Thus, the accused has committed the offence alleged against him.

3. To discharge the initial burden, the complainant was examined as P.W.1 and Exts.P1 to P15 were marked. On an appraisal of the aforesaid evidence, the courts below concurrently observed that the complainant has successfully discharged the initial burden to prove, execution and issuance of the cheques. I do not find any reason to interfere with the said finding.

4. What remains to be considered is, whether the accused had succeeded in rebutting the presumptions

under the N.I. Act which stood in favour of the complainant. No evidence, either oral or documentary, had been adduced to rebut the presumptions under the N.I. Act, except Ext.D1 notice. The accused when examined under Sec.313 of the Cr.P.C., simply denied the liability. No explanation was put forward as to the circumstance under which Ext.P1 series of cheques happened to be in the possession of the complainant. No specific defence contentions were raised when cross-examined the complainant. The only contention raised in the defence is that the cheque dated 5/3/2000 for Rs.30,225/- was dishonored by the bank previously and Ext.D1 demand notice was sent by the complainant on 11/3/2000 and the complaint is filed on 21/7/2000 and hence the complaint is barred by limitation.

5. The trial court accepted the above contention and found that the cheque dated 5/3/2000 for Rs.30,225/- was barred by limitation.

6. As regards the other cheque, in the absence of rebuttal evidence, so as to improbabilise the complainant's evidence, the court below found the accused guilty of the said offence and convicted thereunder.

7. But, in appeal, the accused raised a contention that the alleged transaction under which the amount was due and the cheques were issued was on the basis of Ext.P7 agreement. But Ext.P7 agreement was executed between the accused and 'Kripa Films' represented by the accused. Ext.P1 series of cheques belong to 'Kiridam Release' and therefore, Ext.P1 series of cheques were not drawn and issued to the complainant in discharge of the dues under Ext.P7 agreement. Going by Ext.P7, it is seen that it was executed between the complainant and 'Kripa Films' represented by N. Krishnakumar @ Kiridam Unni, the accused. Thus, indisputably, the accused is a party to Ext.P7 agreement. The complaint is filed by N.

Krishnakumar @ Unni, Chief Executive, M/s 'Kiridam Release', Cotton Hills, Thiruvananthapuram. There is no dispute that the person named N. Krishnakumar mentioned in the complaint and N. Krishnakumar @ Unni mentioned in Ext.P7 agreement are one and the same person. The accused has no dispute that Ext.P1 series of cheques were drawn by the said N. Krishnakumar (Unni) on his account maintained in the South Indian Bank Ltd., Thiruvananthapuram Branch. Similarly, there is no dispute that Ext.P1 series of cheques were drawn in favour of the complainant. It is discernible from the evidence that the complainant has two proprietary concerns, 'Kiridam Release' and 'Kripa Release'. In this context, it is pertinent to note that Ext.P7 agreement is also executed by the accused. The only dispute is that Ext.P1 series of cheques are not drawn and issued against the dues arose under Ext.P7 agreement. But, Exts.P8 to P14 documents prove the liability towards the complainant

and those documents admit the issuance of the cheques. Ext.P8 letter sent by the General Manager of Kiridam Release to the complainant shows that he has forwarded Ext.P7 agreement to the complainant together with the said letter. Thus, the accused himself admits that Ext.P7 agreement was forwarded to the complainant from Kiridam Release, though, Ext.P7 was executed by the accused himself in the name of his own another proprietary concern. Thus, the transaction in which the cheques were issued is one and the same, though the accused used different names of his proprietary concerns. The above view is further fortified by Exts.P9 to P14. Exts.P9 and P10 are the two letters sent by Kiridam Release' and Ext.P9 letter shows that 'Kiridam Release' has forwarded five cheques to the complainant and the details of those cheques are stated in the complaint. Ext.P9 would show that two cheques in Ext.P1 series i.e., cheque dated 8/3/2000 and 11/3/2000 were

forwarded to the complainant as per the letter. Similarly, Ext.P9 letter dated 12/1/2000 would show that four cheques were forwarded to the complainant as per the said letter, including the cheque dated 10/3/2000 in Ext.P1 series. Ext.P11 is an advertisement release order from 'Kiridam Release' and the same shows that 'Kiridam Release' directed the complainant to publish the advertisement of the film 'Millennium Stars' in the Mathrubhumi daily on 27/12/1999 and Malayala Manorama on 28/12/1999. Exts.P12 and P14 are the similar letters giving directions to the complainant to publish advertisement. Thus, Exts.P8 to P14 would clearly show that Ext.P1 series of cheques were drawn and issued by the accused to the complainant in discharge of the amount due to the complainant.

8. I do not find any illegality or irregularity in the above findings of the appellate court. The appellate court has meticulously considered the contentions

raised in appeal and rightly rejected the contentions raised in appeal only. Therefore, the courts below are justified in finding that the accused has miserably failed to rebut the presumptions which stood in favour of the complainant.

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.

10. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, seeking some time to pay the compensation, I am inclined to grant three 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 a fine of ₹50,000/- (Rupees Fifty thousand only) within a period of three months from today and the same shall be paid to the first respondent/complainant as compensation under Sec.357(1)(b) 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 16/10/2015 with sufficient proof to show payment of

compensation.

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