IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

CRL.REV.PET NO. 403 OF 2025

AGAINST THE ORDER DATED 08.01.2025 IN CRL.A NO.104 OF 2023 OF ADDITIONAL DISTRICT COURT, PALA ARISING OUT OF THE JUDGMENT DATED 17.05.2023 IN ST NO.12 OF 2017 OF JUDICIAL MAGISTRATE OF FIRST CLASS -III, KANJIRAPPALLY

REVISION PETITIONER/APPELLANT/ACCUSED:

ASHIDA RASHEED
AGED 45 YEARS
W/O RASHEED, VALIYAKALAYIL (H) CHARALABHAGOM,
ERUMELY P.O, ERUMELY, ERUMELY SOUTH VILLAGE,
KOTTAYAM., PIN - 686509

BY ADVS.
JUSTINE JACOB
SUMESH P.S.
MERIN JOSE
ARSHID P. NOUSHAD
JUSTIN DAVID

RESPONDENTS/RESPONDENTS/COMPLAINANT:

1 **STATE OF KERALA**
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

2 FATHIMA MUHAMMED SALLY
AGED 56 YEARS
W/O MUHAMMED SALLY, PALACKATHADATHIL (H)
PATHIKKAKAVUBHAGOM, KANAKKAPALAM P.O ERUMELY,
ERUMELY SOUTH VILLAGE KOTTAYAM, PIN - 686509

BY ADV.
SMT.SREEJA V., SR. PP

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 10.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

This Criminal Revision Petition has been filed challenging the concurrent finding of conviction and sentence in a prosecution under Section 138 of the Negotiable Instruments Act (for short 'the N.I. Act').

2. The 2nd respondent filed a private complaint against the petitioner under Section 142 of the N. I. Act before the Judicial First Class Magistrate Court - III, Kanjirappally (for short 'the trial court') as S. T. No.12/2017. The case of the 2nd respondent is that the petitioner borrowed a sum of ₹1,60,000/- from her husband for her personal purpose. The petitioner repaid ₹55,000/- on 30.05.2015 and sought one month's time for the balance payment. In the meanwhile, on 19.06.2015, her husband died and when demand was made for the balance amount, the petitioner issued Ext.P1 cheque to the 2nd respondent towards the balance amount which on presentation was dishonoured for want of sufficient funds. Even though statutory notice under Section 138(b) of the N. I. Act was

issued and received by the petitioner, there was no compliance. Hence, the prosecution was launched.

3. Before the trial court, on the side of the complainant, she herself was examined as PW1 and Exts.P1 to P6 were marked. After the trial, the trial court found the petitioner guilty under Section 138 of the N. I. Act and she was convicted for the said offence. She was sentenced to undergo imprisonment till the rising of the court and to pay fine of ₹1,60,000/- (Rupees One lakh and sixty thousand only), in default to suffer simple imprisonment for a period of three months. The petitioner preferred an appeal challenging the conviction and sentence of the trial court before the Additional District and Sessions Court, Pala (for short 'the appellate court') as Criminal Appeal No.104/2023. The appellate court dismissed the appeal. This Criminal Revision Petition has been filed challenging the judgment of the trial court as well as the order of the appellate court.

4. I have heard the learned counsel for the petitioner.

5. To prove the case of the 2nd respondent, she herself gave evidence as PW1. She deposed in tune with the averments in the complaint. Even though she was cross examined in length, nothing tangible could be extracted to discredit her testimony. The petitioner admitted the signature in the cheque. According to the petitioner, her husband and the 2nd respondent were money lenders and long back, an amount of ₹1,60,000/- was borrowed from the husband of the 2nd respondent which was repaid. It was further stated that Ext.P1 was obtained by coercion and fraud. But absolutely no evidence has been adduced to substantiate the same. No complaint was filed by the petitioner before any Police Officer nor did she gave stop payment request to the bank. The 2nd respondent has succeeded in proving the transaction, execution and issuance of the cheque. No rebuttal evidence has been adduced by the petitioner to rebut the presumption available to the 2nd respondent under Sections 118 and 139 of the N. I. Act. Hence, I find no reason to interfere with the concurrent finding of conviction and sentence. Accordingly,

the Criminal Revision Petition is dismissed.

However, the revision petitioner is granted three months' time to appear before the trial court to receive the imprisonment till the rising of the court and to deposit the fine amount.

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

BR

APPENDIX OF CRL.REV.PET 403/2025

PETITIONER'S ANNEXURES

Annexure 1	**TRUE COPY OF THE JUDGMENT S.T NO 12/2017 DATED 17.05.2023 OF JFCM-III, KANJIRAPPALLY**
Annexure 2	**CERTIFIED COPY OF THE JUDGMENT CRL.APPEAL NO.104/2023 DATED ON 08.01.2025**