IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 7TH DAY OF DECEMBER 2023/16TH AGRAHAYANA, 1945

CRL.REV.PET NO. 344 OF 2023

AGAINST THE JUDGMENT DATED 30.09.2021 IN CRL.A.117/2020 OF THE DISTRICT COURT & SESSIONS COURT,THRISSUR

AGAINST THE JUDGMENT DATED 16.03.2020 IN ST 4042/2016 OF JUDICIAL MAGISTRATE OF FIRST CLASS-I, CHALAKUDY

REVISION PETITIONER/APPELLANT/RESPONDENT:

VIBIN MELEPPURAM
AGED 42 YEARS

BY ADVS.
PRABHU K.N.
MANUMON A.
JAYAN KUTTICHAKKU

RESPONDENTS/RESPONDENTS/PETITIONERS:

1 **DENNY THOMAS,**
AGED 52 YEARS,

2 **STATE OF KERALA,**
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN – 682031.

R1 BY NIJI.K.SHAHUL NKS
R1 BY P.A.AYUB KHAN
R2 BY SMT.MAYA M.N., PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR FINAL HEARING ON 27.11.2023, THE COURT ON 07.12.2023 DELIVERED THE FOLLOWING:

P.G. AJITHKUMAR, J.

Crl.R.P.No. 344 of 2023

Dated this the 7th day of December, 2023

O R D E R

The petitioner is the accused in S.T.No.4042 of 2016 on the files of the Judicial Magistrate of the First Class, Chalakkdy. He was convicted and sentenced for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (N.I.Act). His appeal before the Sessions Court, Thrissur was dismissed. Hence, he filed this Revision Petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (Code).

2. Heard the learned counsel for the petitioner, the learned counsel for the 1st respondent and the learned Public Prosecutor.

3. The 1st respondent filed a complaint alleging that in discharge of the money due from the petitioner, he had issued a cheque for Rs.24 lakhs to the 1st respondent on 24.03.2015. When the cheque was presented for encashment, it was

returned unpaid for want of sufficient funds in the account of the petitioner. A demand notice was sent and inspite of receipt of the same, the money due under the cheque as not paid.

4. The accusation was denied by the petitioner. PWs.1 to 3 were examined and Exts.P1 to P6 were marked by the 1st respondent to prove his case. Ext.X1 was also brought in evidence. During the examination under Section 313(1)(b) of the Code, the petitioner denied the evidence brought on record against him and stated that no amount was due from him to the 1st respondent. No defence evidence was however adduced.

5. The trial court after appreciation of the evidence found the petitioner guilty. The appellate court re-appreciated the entire evidence and found no reason to interfere with the findings of the trial court. The appeal was accordingly dismissed. The learned counsel for the petitioner would submit that execution of Ext.P1 was not duly proved. Relying on the oral testimony of PW1, who did not admittedly see filing up of the cheque, the courts below entered a finding

that its execution was duly proved. Ext.X1 is the intimation issued from the bank of the 1st respondent regarding dishonour of the cheque. The handwriting in Ext.P1 cheque and also Ext.X1 intimation are similar, which according to the learned counsel for the petitioner, would substantiate that the cheque is a manipulated one. The petitioner had filed before the trial court two petitions, one for affording an opportunity to adduce evidence to prove the said similarity and another petition to requesting the trial court to compare the handwritings in Ext.P1 and Ext.X1. It is further contended that the petitioner was not provided opportunity to adduce further evidence and the trial court despite allowing the petition requesting a comparison by the court, did not do so. The further contention of the learned counsel is that inspite of specific denial by the petitioner that Ext.P1 lacked consideration, no evidence to prove passing of consideration was let in by the 1st respondent. Ext.P6 is an agreement executed between the petitioner and the 1st respondent. In the second and third pages of that document, the 1st

respondent did not affix his signature. That fact was not reckoned with by the courts below while placing reliance on the said document. Therefore, the learned counsel would submit that evidence is totally lacking to prove that Ext.P1 was duly executed and it is supported by consideration.

6. The learned counsel for the 1st respondent, on the other hand, would submit that from the evidence of PW1 it is quite evident that Ext.P1 was brought filled by the petitioner and signed by him before PW1. That evidence is sufficient to prove the execution of the cheque. It is further contended that although the trial court failed to consider the handwriting in Ext.P1 and Ext.X1, the appellate court after comparison concluded that handwritings in both those documents were unlikely of the same person, and therefore the trial court's failure to compare those documents does not assume any importance. The learned counsel would further submit that the question is whether evidence on record is sufficient to prove execution of Ext.P1, and if proved, whether the petitioner succeed in rebutting the presumption available under Section 139 of the N.I.Act.

7. In **Bir Singh v. Mukesh Kumar [(2019) 4 SCC 197]** the Apex Court held that a meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. It was further held that even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

8. The petitioner has no case that the signature in Ext.P1 was not put by him. His case is that it was given as security only. In the light of the law laid down in the aforesaid decision, having

issuance of Ext.P1 with his signature is admitted by the petitioner, presumption under Section 139 of the N.I.Act is liable to be drawn. The further question is whether the petitioner has succeeded in rebutting the presumption.

9. As stated, the main reason asserted both for dislodging execution of Ext.P1 and lack of consideration is that the similarity of handwriting in it with that in Ext.X1. PW1 has no case that Ext.P1 was in the handwriting of the petitioner. PW1 saw the petitioner signing it only. The question whether the entries in the cheque are in different handwriting would have the effect of discarding the cheque was considered by the Apex Court in **Oriental Bank of Commerce v. Prabodh Kumar Tewari [2022 (5) KHC 560 : AIR OnLine 2022 SC 1365]**. The Apex Court also considered the consequence of declining a request of the accused to bring a report of handwriting regarding the genuineness of the entries in the cheque. It was held that Section 139 of the N.I. Act raises a presumption that a drawer handing over a cheque signed by him is liable unless it is proved by adducing evidence at the

trial that the cheque was not in discharge of a debt or liability. The evidence of a hand-writing expert on whether the respondent had filled in the details in the cheque would be immaterial to determining the purpose for which the cheque was handed over. Therefore, no purpose is served by allowing the application to adduce the evidence of a handwriting expert. For such a determination, the fact that the details in the cheque have been filled up not by the drawer, but by some other person would be immaterial. The presumption which arises on the signing of the cheque cannot be rebutted merely by the report of a handwriting expert. Even if the details in the cheque have not been filled up by the drawer, but by another person, this is not relevant to the defence whether cheque was issued towards payment of a debt or in discharge of a liability. It was further held that it would be open to the accused to raise all other defences which they may legitimately be entitled to otherwise raise in support of his plea that the cheque was not issued in pursuance of a pre-existing debt or outstanding liability.

10. Viewed in the light of the aforesaid proposition of law the fact that the columns in Ext.P1 were filled not by the petitioner, but in a different handwriting is totally immaterial. Therefore, the contention that the petitioner did not get enough opportunity to adduce evidence to show that the handwriting in Ext.P1 is that of the Bank Manager, who wrote Ext.X1 and the trial court did not compare the said documents do not have any substance.

11. The petitioner did not adduce any evidence. It is true that in order to rebut the presumption in respect of a cheque, the accused can rely on the evidence and materials submitted by the complainant. The only thing is that the accused must be able to substantiate his case by preponderance of probabilities. The case set up by the petitioner during the cross-examination of PWs.1 to 3 and also in his answers to the question put to him under Section 313(1)(b) of the Code is that the cheque was issued as a security in respect of the transactions between himself and the 1st respondent. From Ext.P5 account statement and Ext.P6

agreement the capacity of the 1st respondent to pay Rs.24 lakhs and existence of financial obligation from the petitioner in favour of the 1st respondent are evident. Lack of signature of PW1 in two pages of Ext.P6 does not assume much importance since its execution is proved by the evidence of PW3 and it is in favour of the 1st respondent. It was after considering the aforesaid evidence in detail the courts below concurrently held that the petitioner failed to rebut the presumption available under Section 139 of the N.I. Act in respect of Ext.P1.

12. The power of revision under Section 401 of the Code is not wide and exhaustive. The High Court in the exercise of the powers of revision cannot re-appreciate evidence to come to a different conclusion, but its consideration of the evidence is confined to find out the legality, regularity and propriety of the order impugned before it. When the findings rendered by the courts below are well supported by evidence on record and cannot be said to be perverse in any way, the High Court is not expected to interfere with the concurrent findings by the courts

below while exercising revisional jurisdiction. [See: **State of Kerala v. Puttumana Illath Jathavedan Namboodiri (1999) 2 SCC 452; Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke (2015) 3 SCC 123; Kishan Rao v. Shankargouda [(2018) 8 SCC 165].**

13. In the light of the law laid down in the aforesaid decisions, this Court is not expected to substitute the concurrent finding of the court below with a different view unless such findings are perverse and against the evidence. In my view, the courts below rendered the findings that lead to the conviction of the petitioner based on a proper appreciation of evidence. As regards compliance of statutory requirements for the prosecution, the petitioner has no challenge also. In the said circumstances, I am of the view that the revision lacks merits and liable to be dismissed. Accordingly, the revision petition is dismissed.

Sd/-

P.G. AJITHKUMAR, JUDGE

dkr