

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

Crl.Rev.Pet.No. 225 of 2007

**CRA.2/2003 of THE ADDL.DISTRICT AND SESSIONS JUDGE(ADHOC-
III)KOLLAM**

CC.778/2000 of JUDL.MAGISTRATE OF FIRST CLASS-II,PUNALUR
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REVN. PETITIONER: APPELLANT/ACCUSED

**K.SARASAMMA, D/O. GOPALA PILLAI,
LALITHA SADANAM, PANTHAPLAVU,
PATTAZHI, PATHANAPURAM TALUK.**

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS: RESPONDENTS/COMPLAINANTS/STATE

**1. SODHARAN,
SREEKRISHNA NILAYAM, ANCHAL,
ANCHAL VILLAGE, PATHANAPURAM.**

**2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

**BY ADV. SRI.ANCHAL C.VIJAYAN
R2 BY PUBLIC PROSECUTOR MR. AMJAD ALI**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 06/03/2007, THE COURT ON 15-3-2007 PASSED THE
FOLLOWING:**

ORDER ON CRL.M.A.NO. 720/2007 IN CRL.R.P.NO. 225 OF 2007-C

DISMISSED.

15-3-2007

SD/-K.R.UDAYABHANU, JUDGE

TRUE COPY

P.S.TO JUDGE

K.R. UDAYABHANU, J.

CRL.R.P.NO.225 of 2007

DATED THIS THE 15TH DAY OF MARCH 2007

ORDER

The revision petitioner is the accused in C.C.No.778/2000 with respect to the offence under Section 138 of the Negotiable Instruments Act. The revision petitioner stands convicted and sentenced, as modified by the appellate court to undergo simple imprisonment for three months and to pay a compensation of Rs.32,000/- to the complainant and in default to undergo simple imprisonment for one month.

2. The prosecution case is that the impugned cheque for Rs.28,000/- issued towards discharge of liability when presented got dishonoured for insufficiency of funds in the account of the accused/revision petitioner and despite service of notice demanding payment the amount remained unpaid. The evidence adduced consisted of the testimony of PWs.1 and 2 and Exts.P1 to P7 on behalf of the complainant and EXts.D1 and D2 at the

instance of the accused. The findings are concurrent. The execution of the cheque and the dishonour of the same is sought to be proved through the testimony of PW1, the complainant and PW2, the Bank Manager. It is the case of the accused that they issued a blank cheque as security for the employment of her son who was employed as JCB operator with the complainant. DW1, the Secretary of the Service Co-Operative Bank was examined to prove that the loans outstanding against her in the service Co-Operative Bank was closed on 14-7-1998 on 25-3-1999 respectively. DW2, the Manager of the S.B.T. was examined to prove that she was having deposits in the Bank to the tune of Rs.2,39, 926/- and out of which Rs.2,39,680/- was withdrawn on several occasions. The above evidence was adduced to indicate that she was not in need of money at the time.

3. Counsel for the revision petitioner has relied on the decision reported in **Kamalammal v. Mohanan, 2006(3)KLT 972** and **Bindu v. Sreekandan Nair, 2007(1)KLT 525** to stress the point that the admission of signature in the impugned

cheque is not sufficient to conclude that there was execution of the cheque as contemplated under Section 139 of the Negotiable Instruments Act. It is the contention of counsel for the revision petitioner that it is upto the payee/complainant to establish independently the execution of the cheque despite the fact that the signature stands admitted. I find that the ratio of the above decisions are not applicable to the facts of the instant case. PW1 has testified with respect to the details of execution of Ext.P1 cheque. The courts below have meticulously considered the evidence in this regard. The appellate court has specifically held and rightly so, that the evidence of PW1 read as a whole is credible and trustworthy. The case set up by the accused that the blank cheque was issued as security for the employment of the son of the accused as J.C.B. operator is not supported by any evidence. The suggestion in this regard made to PW1 was denied outrightly. The evidence of PWs.1 and 2, the Secretary of the Society and the Bank Manager respectively is also not helpful to sustain the case set up by the accused. Further more, the revision petitioner/accused has not sent any reply to the notice

received demanding payment. The same also gives rise to an adverse inference so far as the case set up by the revision petitioner is concerned.

4. In the circumstances, I find no reasons to deviate from the findings of the courts below. The revision petition is dismissed. The conviction is confirmed.

5. All the same, considering the plea of counsel for the revision petitioner, the sentence is modified to imprisonment till the rising of the court and to pay a compensation of Rs.28,000/-, the cheque amount, and in default to undergo simple imprisonment for three months. The revision petitioner shall appear before the Judicial First Class Magistrate-II, Punalur on 12-4-2007 to receive sentence.

K.R.UDAYABHANU, JUDGE

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