2023/KER/57236

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 18TH DAY OF SEPTEMBER 2023 / 27TH BHADRA, 1945

CRL.REV.PET NO. 1149 OF 2019

AGAINST THE JUDGMENT DATED 16.09.2019 IN CRL.APPEAL NO.176/2019 ON FILES OF THE HON'BLE ADDITIONAL SESSIONS COURT-IV, KOZHIKODE AND THE JUDGMENT DATED 21.09.2019 IN S.T.NO.2278 OF 2016 ON FILES OF THE HON'BLE SPECIAL J.F.C.M COURT (N.I.ACT CASES), KOZHIKODE

REVISION PETITIONERS/APPELLANTS/ACCUSED:

1 PRANA EDUCATIONAL AND CHARITABLE TRUST
KOCHOTH HOUSE, P.O. VEMOM, CHETTAPALAM,
MANATHAVADY, WYNAD, PIN- 670 645,
REPRESENTED BY ITS MANAGING TRUSTEE SHEEBA KOCHOTH.

2 SHEEBA KOCHOTH,
W/O. RAMESHAN, AGED 49 YEARS, MANAGING TRUSTEE,
PRANA EDUCATIONAL AND CHARITABLE TRUST,
KOCHOTH HOUSE, P.O. VEMOM, CHETTAPALAM,
MANATHAVADY, WYNAD, PIN - 670 645.

BY ADVS.
C.S.MANU
SRI.S.K.PREMRAJ

RESPONDENTS/RESPONDENTS/STATE & COMPLAINANT:

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

2 LINCY,
W/O. SAJEESH KUMAR, AGED 43 YEARS
RESIDING AT EDAPPOYIL, KOTTIL PARAMBA,
THIRUTHIYAD P.O., PUTHIYARA, KOZHIKDOE - 673 004,
(BOTH AS PAYEE AND POAH OF HER HUSBAND
SAJEESH KUAMR, S/O. APPUNI, AGED 47 YEARS,
RESIDING AT EDAPPOYIL KOTTIL PARAMBA,
THIRUTHIYAD P.O. PUTHIYARA, KOZHIKODE - 673 004.

BY ADVS.
SHRI.MANEESH NARAYANAN
SRI.S.R.SUNJITH

SR PP - K DENNY DEVASSY

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 18.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R"

ORDER

Dated this the 18th day of September, 2023

This revision petition has been filed under Sections 397 and 401 of Code of Criminal Procedure (hereinafter referred as Cr.P.C. for convenience). The revision petitioners are the accused in S.T. No.2278/2016 on the files of the Court of Special Judicial First Class Magistrate (N.I.Act Cases), Kozhikode and the appellants in Crl.A. No.176/2019 on the files of the Sessions Court, Kozhikode Division. The respondents herein are the original complainant as well as the State of Kerala.

2. I would like to refer the parties in this revision petition as 'complainant' and 'accused' hereinafter, for convenience.

3. Heard the learned counsel for the accused and the learned Public Prosecutor, representing State as well as the learned counsel appearing for the 2nd respondent/ complainant.

4. The case put up by the complainant before the

trial court was that in order to discharge liability to the complainant and her husband to the tune of Rs.9,50,000/-, the 2nd accused issued cheque for Rs.9,50,000/- dated 03.04.2013 drawn on the account maintained by the 1st accused (Prana Educational and Charitable Trust) and the said cheque was dishonored for the reason "funds insufficient". Accordingly, the complainant launched prosecution against the accused alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred as N.I.Act for convenience), since the accused failed to make the payment of the cheque amount on demand, within the statutory period.

5. Initially, the complaint was filed before the Judicial First Class Magistrate Court No.III, Kozhikode and the learned Magistrate took cognizance of the offence and numbered the case as C.C. No.499/2014. While so, in view of the decision of the Apex Court reported in ***[2014 (3) KLT 605] Dasharath Roopsingh Rathod v. State of Maharashtra and another***, the complaint was represented before the Judicial First Class Magistrate Court-II,

Mananthavadi and numbered as S.T. No.2205/2014. Then the case was returned to be presented before the Judicial First Class Magistrate Court-V, Kozhikode as per order dated 31.07.2015 on the ground of change of territorial jurisdiction in view of the amendment to Section 142 of Negotiable Instruments Act. Thereafter, the Judicial First Class Magistrate Court-V, Kozhikode returned the case records to Judicial First Class Magistrate Court-II, Mananthavadi and the case got renumbered as S.T. No.731/2016.

6. Learned Judicial First Class Magistrate Court-II, Mananthavadi secured the presence of accused for trial and finally tried the matter. During trial, PWs 1 and 2 were examined and Exts.P1 to P13 were marked on the side of the complainant. After questioning the accused under Section 313(1)(b) of the Cr.P.C., when opportunity was given, no witness examined on the side of the accused, but Ext.D1 marked on the side of the accused.

7. On appreciation of evidence, the trial court convicted and sentenced the accused as under:

"In the result, the first accused is

convicted and sentenced u/s 255(2) of the Code of Criminal Procedure to pay fine of Rs.1000/- (Rupees One Thousand Only) and the second accused is convicted and sentenced to pay a fine of Rs.9,50,000/- for offence under section 138 of the Negotiable Instruments Act. In default of payment of fine, the second accused shall undergo simple imprisonment for a period of 5 (Five) months. The fine amount realised from the accused shall be paid to the complainant as compensation u/s. 357 (1) (b) of Code of Criminal Procedure."

8. Although, the accused challenged the conviction and sentence imposed by the trial court, before the Sessions Court, Kozhikode, the learned Sessions Judge also confirmed the conviction and sentence imposed by the trial court, as per judgment in Crl.A. No.176/2019 dated 16.09.2019.

9. Challenging the concurrent verdicts of conviction and sentence imposed by the trial court as well as the Appellate Court, this revision petition has been filed. At the time of hearing, the learned counsel for the accused/revision petitioners filed an argument note and the main contention

raised is that the 1st accused in this case is a charitable Trust and the 2nd accused is the Managing Trustee and signatory of the cheque, prosecution against the Trust and the Managing Trustee is not legally sustainable, since Trust is not a juristic person as defined under Section 141 of the N.I. Act. In support of this contention, the learned counsel for the accused/revision petitioners placed decision of this Court reported in ***K.P. Shibu and others v. State of Kerala and another [2019 (3) KHC 1]***. In the said decision, this Court held that, no prosecution against Trust alleging commission of offence punishable under Section 138 of the N.I. Act is maintainable. Since, Trust is not a body corporate or an association of individuals as provided in the explanation to Section 141 of the N.I. Act.

10. In view of this contentions the questions arise for consideration are:

1. Can a Trust (an Artificial Person) be prosecuted alleging commission of offence punishable under Section 138 of the N.I. Act?

2. Whether private or public charitable Trust to be recognized as a juristic person for the purpose of the N.I. Act?

3. Whether Trust, either private or public, is a

company in terms of Section 141 of the N.I. Act?

11. The learned counsel for the complainant/2nd respondent zealously opposed the contention by the learned counsel for the accused relying on the ratio in ***K.P. Shibu and others*** (supra) and submitted that in a judgment rendered by the Madras High Court in Crl.OP Nos. 12630 and 12661 of 2012 and M.P. Nos. 1, 1, 2 and 2 of 2012, the learned Single Judge of the Madras High Court considered many aspects and one question considered was; when can a Trust (an Artificial Person) be prosecuted alleging commission of offence punishable under Section 138 of the N.I. Act? While answering the question it was held that, a Trust (an Artificial Person) can be prosecuted, though there is compulsory sentence of imprisonment prescribed under Section 138 of the N.I. Act, a Trust can be imposed only with fine or compensation.

12. In the said decision, the Madras High Court considered the definition of the words "drawer" and "drawee" as defined under Section 7 of the N.I. Act and also the definitions of the words "acceptor", "acceptor for honour" and "payee" in paragraph No.28 of the judgment and

observed as under:

> *28. To add strength to the above conclusion, we may also look into the term 'drawer' in Section 7 of the Act, which reads as follows:*
>
> *"7. "Drawer" The maker of a bill of exchange or cheque is called the "drawer;" the person thereby directed to pay is called the "drawee." "Drawee in case of need," When in the bill or in any endorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need such person is called a "drawee in case of need".*
>
> *"Acceptor" After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf he is called the "acceptor."*
>
> *"Acceptor for honour."--- When a bill of exchange has been noted or protested for non-acceptance or for better security, and any person accepts is supra protest for honour of the drawer or of any one of the endorsers, such person is called an "acceptor for honour."*
>
> *"Payee."---The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid is called the "payee"."*

13. The Madras High Court also considered the question, whether private or public charitable Trust to be recognized as a juristic person for the purpose of the N.I. Act?

14. After discussing various aspects with reference to Section 3(42) of the General Clauses Act, Section 11 of IPC and Section 26 of the N.I. Act and also the definition of the terms drawer, acceptor, acceptor for honour etc. as defined under Section 7 of the N.I. Act, the learned Single Judge held that the drawer of a cheque is the one who makes a cheque and under Section 138 of the N.I. Act if a drawer fails to pay the cheque amount as demanded under a notice, is liable for punishment. Therefore, it is undoubtedly clear that a public charitable Trust, being a drawer is liable for punishment under the N.I. Act.

15. Another question considered by the Madras High Court was as to whether Trust, either private or public, is a company in terms of Section 141 of the N.I. Act? After elaborately discussing the definition of Section 141 of the N.I. Act with reference to decision of the Apex Court reported in **[2008 (5) SCC 449] Ramanlal Bhailal Patel**

v. State of Gujarat, the learned Single Judge answered the queries holding that (i) A Trust, either private or public/charitable or otherwise, is a juristic person who is liable for punishment for the offence punishable under Section 138 of the Negotiable Instruments Act. (ii) A Trust, either private or public/charitable or otherwise, having either a single trustee or two or more trustees, is a company in terms of Section 141 of the Negotiable Instruments Act. (iii) For the offence under Section 138 of The Negotiable Instruments Act, committed by the Trust, every trustee, who was in-charge of the day-to-day affairs of the Trust shall also be liable for punishment besides the Trust.

16. The learned counsel for the 2nd respondent submitted that even though the judgment of the Madras High Court rendered above was challenged before the Apex Court by filing S.L.P, the same also was dismissed, though he did not place the said order of dismissal.

17. Apart from the decision of the Madras High Court, the learned counsel for the 2nd respondent placed decision of the Bombay High Court (Aurangabad Bench) in ***The Dadasaheb Rawal Co-op. Bank of Dondaicha Ltd v.***

Ramesh and others in Criminal Revision Application No.239 of 2006, the Bombay High Court opined that a plain reading of the expression "company" as used in sub-clause(a) of the Explanation is that it is inclusive of any body corporate or "other association of individuals". The term "association of individuals" will include club, trust, HUF business, etc. It shall have to be construed *ejusdem generis* alongwith other expressions "company" or "firm".

18. Another decision of the Gujarat High Court in ***Shah Rajendrabhai Jayantilal v. D.Pranjivandas and sons Prop. Dhirajlal Pranjivandas Popat [R/SCR.A/1970/2015]*** also has been placed where the learned Single Judge addressed the same issue and held as under:

> *"The issue raised in this application prima facie appears to be squarely covered by a decision of the Supreme Court in the case of Anita Handa vs. M/s. Godfather Travels & Tours Pvt Ltd, [2007(11) SCC 297, wherein the Supreme Court has taken a view that if the company is not impleaded as accused, the complaint R/SCR.A/1970/2015 ORDER against a Director of the company would not be maintainable. A plain reading of the expression*

> *"company" as used in subclause (a) of the explanation appended to Section 141 is that it is inclusive of any body corporate or "other association of individual". The term "association of individuals" will include club, trust, Hindu Undivided Family business. Prima facie, it shall have to be construed ejusdem generis along with other expression "company" or "firm". Therefore, a joint family business must be deemed as a juristic person like a company or firm."*

19. In this matter, the specific case of the complainant before the trial court was that on receipt of money as loan from the complainant for and on behalf of the Trust, a cheque of the 1st accused (Trust) was signed and issued by the 2nd accused to discharge the liability of the Trust and accordingly on dishonor of the cheque prosecution was launched.

20. Analyzing the decision rendered by the Madras High Court, it could be gathered that after elaborately considering the relevant statutory provisions, the learned Single Judge held as above. The High Courts of Bombay and Gujarat interpreted the explanation appended to Section 141 of the N.I. Act with reference to "inclusive of any body

corporate" or "other association of individuals" and construed the above terms by applying the principle of *ejusdem generis* and held that the term "association of individuals" will include club, trust, Hindu Undivided Family Business.

21. Coming to **K.P. Shibu and Others**'s case (supra), it is discernible that the said decision is not so elaborative and the interpretation of the term "association of individuals" not done by applying the ratio of *ejusdem generis*. The principle of *ejusdem generis* intented for the construction of constitutional and statutory provisions means "of the same kind" and this doctrine provides that the general words which follow the specified words will be restricts to the same class of the specified words. While applying this principle, (1) the general words must follow the specific words and the specific words must necessarily constitute, a genus/class (2) the legislative intention of the statute to be born in mind for restricting the general word to the genus/class of the specified words if follows and (3) this principle has to be used by the Courts properly and apply where it is necessary and not use this principle where it is not necessary so as to defeat the purpose of the statute and

to cause miscarriage of justice are the conditions to be satisfied. Thus, it appears that the High Courts of Madras, Bombay and Gujarat correctly interpreted the various provisions and the law emerges from the said judgments are as under:

> *(i) The expression "company" used in sub-clause (a) of explanation appended to Section 141 of the N.I. Act includes any body corporate or other "association of individuals" and the term "association of individuals" to be interpreted by applying the principle of ejusdem generis. To be construed so, the term "association of individuals" will include club, trust and Hindu undivided family business along with the expression "company" or "firm".*
>
> *(ii) A Trust, either private or public/charitable or otherwise, is a juristic person who is liable for punishment for the offence punishable under Section 138 of the Negotiable Instruments Act.*
>
> *(iii) A Trust, either private or public/charitable or otherwise, having either a single trustee or two or more trustees, is a company in terms of Section 141 of the Negotiable Instruments Act.*
>
> *(iv) For the offence under Section 138 of The Negotiable Instruments Act, committed by the Trust, every trustee, who was in-charge of the day-to-day affairs of the Trust shall also be liable for*

punishment besides the Trust.

22. Therefore, following the legal principles set forth above, it has to be held that the challenge raised by the accused on the ground that no prosecution under Section 138 read with Section 141 of the N.I. Act against the Trust would lie, cannot be sustained and the same stands repelled.

23. Apart from the said contention, some other decisions prior to and one decision after ***Rangappa v. Sri.Mohan [2010 (2) KLT 682 (SC)]*** of the Apex Court have been placed to unsettle the concurrent verdicts of conviction and sentence. Insofar as the presumptions under Sections 118 and 139 of the N.I. Act are concerned, the law is well settled. In ***Rangappa***'s case (supra), the Apex Court considered the presumption available to a complainant in a prosecution punishable under Section 138 of the N.I Act and held as under:

> *"The presumption mandated by S.139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat [2008 (1) KLT 425 (SC)] may not be correct. This is of course in the nature of a rebuttable*

presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant. S.139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While S.138 of the Act specified a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under S.139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by S.138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused/defendant cannot be expected to discharge an unduly high standard or proof. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the

presumption under S.139, the standard of proof for doing so is that of `preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. Accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."

24. In the decision reported in [2019 (1) KLT 598 (SC) : 2019 (1) KHC 774 : (2019) 4 SCC 197 : 2019 (1) KLD 420 : 2019 (2) KLJ 205 : AIR 2019 SC 2446 : 2019 CriLJ 3227], ***Bir Singh v. Mukesh Kumar***, the Apex Court while dealing with a case where the accused has a contention that the cheque issued was a blank cheque, it was held as under:

"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. If the cheque is otherwise valid, the penal provisions of S.138 would be attracted. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence."

25. In a latest 3 Bench decision of the Apex Court reported in [2021 (2) KHC 517 : 2021 KHC OnLine 6063 : 2021 (1) KLD 527 : 2021 (2) SCALE 434 : ILR 2021 (1) Ker. 855 : 2021 (5) SCC 283 : 2021 (1) KLT OnLine 1132], ***M/s.Kalamani Tex & anr. v. P.Balasubramanian*** the Apex Court considered the amplitude of presumptions under Sections 118 and 139 of the N.I Act it was held as under:

"Adverting to the case in hand, we find on a plain reading of its judgment that the Trial Court completely overlooked the provisions and failed to appreciate the statutory presumption drawn under S.118 and S.139 of NIA. The Statute mandates that once the signature(s) of an accused on the cheque/negotiable instrument are

established, then these `reverse onus' clauses become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him. Once the 2nd Appellant had admitted his signatures on the cheque and the Deed, the Trial Court ought to have presumed that the cheque was issued as consideration for a legally enforceable debt. The Trial Court fell in error when it called upon the Complainant-Respondent to explain the circumstances under which the appellants were liable to pay.

.....

18. Even if we take the arguments raised by the appellants at face value that only a blank cheque and signed blank stamp papers were given to the respondent, yet the statutory presumption cannot be obliterated. It is useful to cite Bir Singh v. Mukesh Kumar (2019 (1) KHC 774 : (2019) 4 SCC 197 : 2019 (1) KLD 420 : 2019 (1) KLT 598 : 2019 (2) KLJ 205 : AIR 2019 SC 2446 : 2019 CriLJ 3227], P.36., where this Court held that:

> *"Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under S.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."

26. The learned counsel for the accused/revision petitioners argued further that the complainant failed to prove the execution and issuance of Ext.P1 cheque by the accused and also the pleadings in the complaint and testimony of PWs 1 and 2 are contradictory in nature. Though, this contentions were raised before the Courts below, the Courts below negatived the same, relying on the evidence of PWs 1 and 2 and Exts.P1 to P13 and thereby the benefit of twin presumptions under Sections 118 and 139 of the N.I. Act was adjudged in favour of the complainant.

27. In this context, I am inclined to refer the power of revision available to this Court under Section 401 of Cr.P.C. r/w Section 397, which is not wide and exhaustive to re-appreciate the evidence to have a contra finding. In the decision reported in [(1999) 2 SCC 452 : 1999 SCC (Cri) 275], **State of Kerala v. Puttumana Illath Jathavedan Namboodiri**, the Apex Court, while considering the scope of the revisional jurisdiction of the High Court, laid down the

following principles (SCC pp. 454-55, para 5):

> *"5. ..... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ..."*

28. In another decision reported in [(2015) 3 SCC 123 : (2015) 2 SCC (Cri) 19], ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke***, the Apex Court held that the

High Court in exercise of revisional jurisdiction shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. Following has been laid down in para.14 (SCC p.135) :

> *"14. ..... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 Cr.P.C is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaring unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the*

courts may not interfere with decision in exercise of their revisional jurisdiction."

29. The said ratio has been followed in a latest decision of the Supreme Court reported in [(2018) 8 SCC 165], ***Kishan Rao v. Shankargouda***. Thus the law is clear on the point that the whole purpose of the revisional jurisdiction is to preserve power in the court to do justice in accordance with the principles of criminal jurisprudence and, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence had already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the court which would otherwise tantamount to gross miscarriage of justice. To put it otherwise, if there is non-consideration of any relevant materials, which would go to the root of the matter or any fundamental violation of the principle of law, then only the power of revision would be made available.

30. In view of the legal position herein above elicited, the other contentions raised by the learned counsel for the

accused referring to the decisions viz. **State of Kerala v. Puttamana Illath Jathavedan Namboodiri** [1999 (1) KLT 735], **C.T. Joseph v. I.V. Philip** [AIR 2001 Ker. 300], **Santhi v. Mary Sherly** [2011 (3) KT 273], **ANSS Rajashekar v. Augustus Jeba Ananth** [AIR 2019 SC 942], **S.Devan v. C. Krishnan Menon and another** [2010 (2) KLT 397], **Velayudhan v. Velayudhan** [2001 (1) KLT 392] **Narbada Devi Gupta v. Birendra Kumar Jaiswal** [AIR 2004 SC 175], **Krishna Janardhan Bhat v. Dattatraya Hedge** [2008 (1) KLT 425 (SC)], **State of Punjab v. Jagir Sigh, Baljit Singh and Karam Singh** [1975 (3) SCC 277], **Dilip and another v. State of M.P.** [AIR 2007 SC 369] cannot sustain.

31. On scrutiny of the case put up by the accused before the trial court and the Appellate Court, it appears that the accused raised contentions before the trial court by filing a statement under Section 313(5) of Cr.P.C. that the accused have not committed any offence. The accused have not issued cheque for Rs.9,50,000/- to the complainant. The 2nd accused was one of the Managing Trustees of Prana Educational and Charitable Trust which is a non profitable

charitable institution. That trust is not conducting real estate business. Rameshan, husband of the 2nd accused, was having close friendship with the husband of the complainant, and during that time, the accused and her husband deposited amount in Prana Charitable Trust. Thereafter, cheque No.101019 dated 30/01/2013 was issued to the complainant and she encashed that cheque for Rs.10,00,000/-. Moreover, Rs.1,00,000/- paid on 11/01/2013 and Rs.2,00,000/- paid on 21/01/2013 to the complainant through her account No. with the Syndicate Bank, Kozhikode branch. More over, the cheque No.101616 dated 31/09/2012 for Rs.10,00,000/- was given to the complainant. Even after receiving Rs.23,00,000/-, the husband of the complainant demanded more amount as interest. The complainant and husband are not entitled to get any interest. The complainant filed the case misusing the cheque issued as a security by writing the amount and date in that cheque. The complainant is not entitled to get any amount from the accused. The accused are not liable to pay compensation or interest to the complainant.

32. In fact, the evidence available would go to show that the 2nd accused herein admitted receipt of Rs.19,50,000/- and in order to discharge the said sum, two cheques were issued. One cheque issued bearing No.101616 for Rs.10,00,000/- was encashed and Ext.P1 cheque dated 03.04.2013 issued for Rs.9,50,000/- was dishonored. Thus the transaction and issuance of the cheque, in fact is admitted rather proved by the complainant. In such a case, it is the bounden duty of the accused to rebut the presumptions. In fact, in the case at hand no evidence is available to see the rebuttal.

33. Apart from the above contentions, nothing substantiated by the learned counsel for the accused/revision petitioners to revisit the concurrent verdicts of conviction and sentence.

34. Therefore, the conviction imposed by the trial court and confirmed by the Appellate Court does not require any interference. Coming to the sentence, the same also is very reasonable and the same also does not require any interference.

35. In the result, this revision petition fails and is

accordingly dismissed.

36. Therefore, the revision petitioners/accused are directed to pay the fine/compensation imposed by the trial court within a period of two weeks from today. If the revision petitioners/accused fail to pay the fine/compensation, as directed, the trial court shall execute the sentence as per law without fail.

Registry is directed to forward a copy of this order to the trial court for information and compliance within seven days.

Sd/-

A. BADHARUDEEN
JUDGE

SK