

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

CRL.REV.PETNO. 473 OF 1999 (D1)

**AGAINST THE JUDGMENT IN CRL.A 323/1996 OF II ADDL. SESSIONS COURT, ERNAKULAM
DATED 25-08-1998**

AGAINST THE JUDGMENT IN CC 688/1994 OF J.F.C.M.-II, KOCHI DATED 07-06-1996

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**PS.KURIAN, ATTENDER,
COCHIN DOCK LABOUR,
WELLINGTON ISLAND, KOCHI-682003.**

**BY ADVS.SRI.A.J.VARGHESE
SRI.FIROZ K.ROBIN**

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE/ADDL.RESPONDENTS:

**1. M.V.MATHEW, S/O. VARGHESE,
MADAMAKKAL HOUSE,
MOOLANKUZHI, KOCHI. (DIED)**

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

***ADDL.R3 TO R5:**

***ADDL.R3: M.M. ROY, S/O. LATE M.V.MATHEW,
MADAMAKKAL HOUSE, MOOLANKUZHI,
KOCHI-682507.**

***ADDL.R4. M.M. JAMES, S/O. LATE M.V.MATHEW,
MADAMAKKAL HOUSE, NEAR LORRETO CHURCH, MOOLANKUZHI,
KOCHI-682507.**

***ADDL.R5. ASUNDHA SABU, D/O. LATE M.V. MATHEW,
THAZHUPPIL HOUSE, EDAKOHI, PIN-682006.
(*IMPLEADED AS ADDL. RESPONDENTS AS PER ORDER DATED 22.11.2014 IN
CRL.M.A.7284/14 IN CRL.R.P.473/99)**

**BY PUBLIC PROSECUTOR SRI. N.SURESH
ADDL.R5 BY ADV. DR.K.P.PRADEEP
BY ADV. SRI.JOSEPH EDAKKATT**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
20-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

OKB

K.HARILAL, J.

Cr1.R.P. No.473 of 1999

Dated this the 20th day of May, 2015.

O R D E R

1.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.323/1996 on the files of the court of the II Additional Sessions Judge, Ernakulam. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in C.C.No.688/1994 on the files of the Judicial First Class Magistrate's Court-II, Kochi. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for six months and to pay Rs.75,000/- as fine and in default to undergo

simple imprisonment for three months.

2.The learned counsel for the revision petitioner reiterated the contentions which were raised before the courts below and got rejected concurrently. The learned counsel urged for a re-appreciation of evidence once again, which is not permissible under the revisional jurisdiction unless any kind of perversity is found in the appreciation of evidence. The revision petitioner failed to point out any kind of perversity in the appreciation of evidence or illegality or impropriety in the findings whereby the trial court convicted him.

3.The courts below had concurrently found that the complainant/1st respondent had successfully discharged the initial burden of proving execution and issuance of the cheque; whereas the revision petitioner had failed to rebut the presumption

under Section 118(a) and 139 of the N.I. Act which stood in favour of the 1st respondent. So also, it is found that the debt due to the 1st respondent was a legally enforceable debt and Ext.Pl cheque was duly executed and issued in discharge of the said debt.

4.This Court is satisfied that the courts below had meticulously evaluated the evidence on record. I do not find any kind of illegality or impropriety in the said findings or perversity in appreciation of evidence, from which the above findings had been arrived at. Therefore, I am not inclined to re-appreciate entire evidence once again and I confirm the concurrent findings of conviction.

5.At last, the learned counsel for the revision petitioner submits that the substantive sentence imposed on the revision petitioner is disproportionate with the gravity and nature of the

offence. The learned counsel prayed for setting aside the sentence of imprisonment. If the revision petitioner is incarcerated for a period as ordered by the courts below, the entire family will be put in great hardship.

6.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.

7.The learned counsel for the revision petitioner submits that the revision petitioner had already undergone imprisonment for 29 days in execution of the sentence imposed by the court below. It is also submitted that now the first respondent/complainant is no more. Having regard to the nature and gravity of the offence under Section 138 of the N.I. Act, I am of the opinion that the above imprisonment period which he had already undergone is sufficient to meet the ends of justice. No further substantive sentence of imprisonment need be imposed on the petitioner.

8.Consequently, in supersession of the sentence passed by the trial court and confirmed by the appellate court, the revision petitioner will stand sentenced as follows:

- i. The revision petitioner shall pay a fine of Rs.75,000/- (Rupees Seventy five thousand only) and the same shall be given to the legal heirs of the deceased complainant on production of proof of their legal heirship. If the revision petitioner had already deposited the cheque amount in compliance with the interim order passed by this Court, the same shall be credited towards the fine and shall be given to the legal heirs of the deceased complainant.
- ii. In default, the revision petitioner shall undergo simple imprisonment for a period of two months.

This Criminal Revision Petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.