

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

Crl.Rev.Pet.No. 706 of 2003 (B2)

(CRL.A 259/2001 of III ADDL. SESSIONS COURT (ADHOC),
FAST TRACK -I, THRISSUR)
(ST 3429/1999 of J.M.F.C.,WADAKKANCHERY)

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REVISION PETITIONER(S)/APPELLANT/ACCUSED:

JAYAKRISHNAN, S/O. CHANDRA PANICKER,
POOLERY HOUSE, PULACODE DESOM, THALAPPILLY TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENT(S)/RESPONDENT AND STATE/COMPLAINANT AND STATE:

1. UNNIKRISHNAN, OWNER OF UDHAYAGIRI
RETREADING COMPANY, S/O. KUNHIKAVU AMMA,
KILLIMANGALAM VILLAGE, DESOM, THALAPPILLY TALUK.

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

R1 BY ADV. SRI.P.GOPALAKRISHNA MENON

R1 BY ADV. SRI.M.JITHESH MENON

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 23-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

“C.R.”

K.HARILAL, J.

Cr1.R.P. No.706 of 2003

Dated this the 23rd day of June, 2015.

O R D E R

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.259/01 on the files of the Court of III Additional Sessions Judge (Ad hoc), Fast Track Court-I, Thrissur. The above appeal was filed challenging the judgment whereby the revision petitioner was found guilty of the said offence, passed in S.T.No.3429/99 on the files of the Judicial First Class Magistrate's Court, Wadakkancherry. According to the impugned judgment, the revision petitioner stands sentenced to undergo simple imprisonment for a period of three months and to pay an amount of Rs.38,000/- to the complainant as compensation, under

Section 357(3) of the Cr.P.C. The legality and propriety of the concurrent findings of conviction and sentence are under challenge in this revision petition.

2. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent.

3. The sole point raised by the learned counsel for the revision petitioner is that the complaint was not maintainable as the same was filed before the expiry of 15 days from the date of refusal of the lawyer's notice. Going by the impugned judgment, it could be seen that the accused had refused to accept the lawyer's notice on 20.9.1999. The complaint was filed on 29.9.1999 and the cognizance was taken on the same day itself. Thus, factually the allegation stands undisputed.

4. Then, the question to be considered is, whether the complaint alleging commission of the offence under Section 138 of the N.I. Act, filed immediately after the receipt of the returned notice, before the expiry of 15 days, on refusal of the notice by the drawer, is maintainable or not.

5. What is discernible on a close reading of Sections 138(b), 138(c) and 142(b) of the N.I. Act, in juxtaposition, is that, where the drawer of the cheque fails to make payment of the amount within 15 days of the receipt of the notice under Section 138(b) of the N.I. Act, the complaint must be made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138 of the N.I. Act. Thus, indisputably, the cause of action arises on the failure to make payment within fifteen days and the period of one month begins on the date on which the cause of action arises, i.e., fifteen days after the receipt of notice. The expression 'receipt' of the said notice employed in Section 138(c) of the N.I. Act gets relevancy, where the notice had been duly served on the drawer of the cheque. It follows that, in case, the notice has been refused and returned, the expression 'receipt' loses its relevancy and the period of one month begins to run from the date on which the payee gets back the returned notice, since the cause of action would arise on that date. In short, the date of

accrual of cause of action varies in accordance with the 'receipt' or 'refusal' of the notice, as the case may be.

6. In the above view point, I am of the opinion that 15 days' period provided for payment is applicable to the drawer, who received the notice only, and in the case where the drawer refused to accept the notice, the payee is not liable to wait for expiry of 15 days from the date of refusal to get the cause of action accrued. In the case where notice is received by the drawer, the cause of action arises only on the expiry of 15 days; whereas, in the case of 'refusal', the cause of action would arise on the day on which the payee gets back the returned notice on refusal by the drawer and the period of 30 days for filing the complaint begins to run from that day onwards. So, the complainant is justified in filing the complaint immediately after the receipt of the returned lawyer's notice, without waiting for the expiry of 15 days. In this analysis, I find that the complaint is maintainable under the relevant law and there is no legal infraction

with the statutory compliance under Section 138(c) or Section 142(b) of the N.I. Act.

7. It is also contended that the sentence imposed on the revision petitioner is excessive and disproportionate with the nature and gravity of the offence under Section 138 of the N.I. Act and the sentence imposed on the revision petitioner is liable to be reduced and modified. To fortify the above point, the revision petitioner relies on the decisions in Kaushalya Devi Massand v. Roopkishore [AIR 2011 SC 2566] and Vijayan v. Baby [2011(4) KLT 355].

8. 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 v. 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.

9. In the light of the above decisions, I find that the sentence imposed on the revision petitioner is disproportionate with the nature and gravity of the offence under Section 138 of the N.I. Act. Consequently, the substantive sentence of simple imprisonment for three months will stand reduced and modified to simple imprisonment for one day till rising of the court and the revision petitioner is given five months' time to pay the compensation to the complainant. In supersession of the sentence imposed by the trial court and confirmed by the appellate court the revision petitioner will stand sentenced as follows:

- i. The revision petitioner shall undergo simple imprisonment for one day till rising of the court.
- ii. He shall pay a compensation of Rs.38,000/- (Rupees Thirty eight thousand only) to the complainant within five months from today, under Section 357(3) of the Cr.P.C.
- iii. He shall appear before the trial court to

suffer the substantive sentence of simple imprisonment as ordered above on or before 24/11/2015 with sufficient proof to show payment of compensation.

iv. In default, he shall undergo simple imprisonment for two months.

v. If the revision petitioner had deposited any amount in the trial court, in compliance with the direction of this Court or the appellate court, that amount shall be given credit to and the balance alone need be paid as compensation. In that event, the 1st respondent/complainant is allowed to realise such deposit, if any.

The criminal revision petition is disposed of.

Sd/-
K. HARILAL, JUDGE

okb.

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P.A. to Judge