

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

Crl.Rev.Pet.No. 788 of 2003

AGAINST THE JUDGMENT IN CRL.A.NO. 411/1997 of ADDITIONAL
SESSIONS COURT (AD HOC-I), THALASSERY DATED 12-11-2002

AGAINST THE JUDGMENT IN CC 1001/1994 of J.M.F.C.-I,
KANNUR DATED 20-11-1997

REVISION PETITIONER/APPELLANT/ACCUSED:

R. SAJEEVAN S/O. BHASKARAN,
RAYAROTH HOUSE, THEKKEBHAGAM,
AZHIKODE SOUTH, P.O. AZHIKODE,
KANNUR DISTRICT.

BY ADVS.SRI.HARIDAS THAIKKANDY
SMT.DAISY THAMPI

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

1. K.K. BALAKRISHNAN, S/O. KUNKAN,
36 YEARS, KAKKOTH HOUSE,
RAMATHERU, PALLIKUNNU P.O.,
KANNUR.
2. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

R1 BY ADV. SRI.T.P.PANKAJAKSHAN
R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 18-08-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.2894 OF 2003 IN CRL.R.P.NO.788 OF 2003:

CLOSED

18/8/2015

SD/- K. HARILAL, JUDGE.

//true copy//

P.S. to Judge

K. HARILAL, J.

Crl.R.P. No.788 of 2003

Dated this the 18th day of August, 2015

ORDER

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.411 of 1997 on the files of the Additional Sessions Judge Ad hoc-I), Thalassery. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.1001 of 1994 on the files of the Judicial First Class Magistrate's Court-I, Kannur. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple

imprisonment for three months under Sec.138 of the N.I. Act and to pay ₹60,000/- as compensation to the complainant within a period of one month under Sec.357(3) of the Cr.C.P., failing which, the complainant can realise the same as of fine.

2. The complainant's case is that the accused borrowed an amount of ₹60,000/- from the complainant agreeing to repay the same on 10/10/1994 and when he failed to repay the amount, he had drawn and issued Ext.P1 cheque for the said amount to the complainant and when he presented the said cheque for encashment, the same was dishonoured and returned for want of sufficient funds.

3. To discharge the initial burden, the complainant was examined as P.W.1 and Exts.P1 to P5 were marked. After considering the evidence on record, the courts below found that the complainant has successfully discharged the initial burden and thereby, the presumptions under Secs.139 and 118(a) of the N.I. Act would stand in favour of the

complainant.

4. To rebut the presumptions, no positive evidence either, oral or documentary, was forthcoming from the accused. When the complainant was examined, it was suggested that he had received ₹5,000/- only and the same was repaid. Thus, the execution and issuance of the cheque stand virtually admitted by the accused. In the absence of any evidence to improbabilise the complainant's case, the courts below are justified in finding that the accused has miserably failed to rebut the presumptions which stood in favour of the complainant. There is no illegality or impropriety in any of the findings in the impugned judgment and I do not find any perversity in the appreciation of evidence from which those findings have arrived at.

5. 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.

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. In the light of the above decisions and the nature and gravity of the offence under Sec.138 of the N.I. Act, 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 petitioner is given four months time to pay the compensation. 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. The Revision Petitioner shall pay ₹60,000/- (Rupees Sixty thousand only) to the 1st respondent/complainant as compensation under Sec.357(3) of the Cr.P.C. within a period of four months from today.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive

sentence of simple imprisonment as ordered above on or before 18/12/2015 with sufficient proof to show payment of compensation.

iv. In default, the Revision Petitioner shall undergo simple imprisonment for a period of one month.

v. If he had deposited any amount in the trial court towards compensation or fine, the same shall be given credit to and the balance alone needs to be paid as compensation or fine, as the case may be, and in that event, the complainant is allowed to realise such deposit from the court.

The Criminal Revision Petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

Nan/

//true copy// P.S. to Judge