

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

Cr1.Rev.Pet.No. 908 of 2003 ()

Cr1.A 77/1997 of ADDL.SESIONS COURT (ADHOC)-II, THALASSERY

STC 121/94 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, PAYYANNUR

REVISION PETITIONER/APPELLANT/ACCUSED :

V. SAMUEL THACHAN, S/o MATHAI, AGED 63 YEARS,
NEAR R.C.CHURCH, MADAYI.P.O., PAYANGADI,
KANNUR DISTRICT.

BY ADVS.SRI.HARIDAS THAIKKANDY
SMT.DAISY THAMBI

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE :

1. K.P.PURUSHOTHAMAN, S/o.AYYAPPAN, AGED 57 YEARS,
PALLIKKARA, THAVAM.P.O., CHERUKUNNU,
KANNUR DISTRICT.
2. THE STATE OF KERALA REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.I.V.PRAMOD
R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 02-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No.908 of 2003

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Dated this the 2nd day of July, 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.77/1997 on the files of the Additional Sessions Judge (Adhoc-II), Thalassery. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T.C.No.121/1994 on the files of the Judicial First Class Magistrate's Court, Payyannur. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for one month.

2. The complainant's case is that the accused

borrowed an amount of ₹15,000/- from the complainant on 01.04.1993 under the pretext to repay the amount within 15 days. But, that money was not paid back as promised by him and instead of it, he issued a cheque dated 05.05.1993 for an amount of ₹15,000/- in discharge of the said liability. When the cheque was presented for encashment, the same was dishonoured and returned for want of sufficient funds and thereby, he has committed the offence punishable under Section 138 of the N.I.Act.

3. In 313 statement, the accused contended that Ext.P1 cheque was issued as a security only. But, in Ext.P6 reply notice, it is stated that the accused had given the cheque for ₹15,000/- to the complainant and it shows the circumstances for which he happened to give such a cheque. The accused had a contention that the son of the complainant and the son of the accused had a visa transaction and an amount of ₹15,000/- was due from the son of the accused to the complainant's son and for that

amount as an assurance the accused being the father issued the cheque. Thus, the only contention raised in defence is that Ext.P1 cheque was issued as a security only. In **ICDS Ltd v. Beena Shabeer** (2002 (3) KLT 218), the Supreme Court held that no legal bar in presenting the cheque given as a security or guarantee and prosecuting the accused for the dishonour of such a cheque for want of money. In view of the above decision, even if the defendant's case is admitted as such, it would fall under 138 of the N.I.Act. There is no illegality or impropriety in the concurrent findings of the court below in this respect.

4. 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.

5. The courts below had concurrently found that the complainant/1st respondent had successfully discharged 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.P1 cheque was duly executed and issued in discharge of the said debt.

6. 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. Therefore, I am not inclined to re-appreciate entire evidence once again and I

confirm the concurrent findings of conviction.

7. At last, the learned counsel for the Revision Petitioner submits that the sentence imposed on the Revision Petitioner is disproportionate with the gravity and nature of the offence contemplated under Section 138 of the N.I.Act.

8. Similarly, the substantive sentence imposed on the revision petitioner is too harsh and excessive. The learned counsel for the revision petitioner prayed for setting aside the sentence of imprisonment also. If the revision petitioner is incarcerated for a period as ordered by the courts below, the entire family will put in great hardship.

9. 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.

10. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, I am inclined to grant 'three' months time to pay the compensation. Similarly, the substantive sentence of imprisonment is reduced and modified to simple imprisonment for one day till rising of the court.

11. Consequently, in supersession of the sentence imposed by the trial court and modified 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 a compensation of Rs.15,000/- (Rupees Fifteen thousand only) to the 1st respondent under Section 357(3) of the Cr.P.C within a period of three 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 3rd October, 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.

The Criminal Revision Petition is disposed of accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge