

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

Cr1.Rev.Pet.No. 960 of 2003 ()

CRL.A 292/2001 of ADDL. DISTRICT AND SESSIONS JUDGE, NORTH
PARAVUR

CC 1066/1998 of J.M.F.C.-II, ALUVA

REVISION PETITIONER/APPELLANT/ACCUSED :

P.C.THOMAS, S/o.P.P.CHACKO, PANIKULAM VEEDU,
KURUMASSERY, ALUVA.

BY ADVS.SRI.R.PADMARAJ
SRI.BIJU HARIHARAN

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

1. A.V.SHIBU ALIAS, S/o.VARGHESE,
ARAKKAPARAMBIL VEEDU, NADUVATTOM,
MANJAPRA, ANGAMALY.
 2. STATE OF KERALA, REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.
- R1 BY ADVS. SRI.M.M.MATHEW (MANNOOR ETTONNIL)
SRI.K.P.SURESH KUMAR
- R2 BY PUBLIC PROSECUTOR SRI.JUSTIN JACOB.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 20-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No. 960 of 2003

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Dated this the 20th 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.292/2001 on the files of the Additional District and Sessions Judge, N.Paravur. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.1066/98 on the files of the Judicial First Class Magistrate's Court-II, Aluva. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for three months and to pay a fine of ₹ 1,000/-. In default, to undergo simple imprisonment for 15

days.

2. The complainant's case is that the accused borrowed a sum of ₹30,000/- from him and in discharge of the said liability, he issued Ext.P1 cheque dated 4.11.1995 for the said amount. When he presented the cheque for encashment, the same was dishonoured for want of sufficient funds. Though he caused to issue a lawyer's notice, the accused did not pay the said amount nor did he sent a reply denying the transaction. In 313 statement, the accused contended that he had no transaction with the complainant and Ext.P1 was a blank signed cheque issued to one Baby from whom the accused had borrowed a sum of ₹20,000/-. In addition to that, he had handed over a stamp paper and RC book of his vehicle to the said Baby. Though he has raised such a contention, he has not adduced any evidence except his oral assertion as DW1 to substantiate the said contention. It is pertinent to note that he failed to send a reply notice denying the said liability. In the

absence of rebuttal evidence, the court below is justified in finding that the revision petitioner failed to rebut the presumptions under Sections 139 and 118(a) of the N.I.Act which stood in favour of the complainant.

3. 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.

4. 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.

5. 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.

6. 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. The learned counsel further sought for some time to pay the fine as he is unable to raise the said amount

forthwith due to paucity of funds.

7. 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.

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 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.

9. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, seeking time to pay the fine, I am inclined to grant three months time to pay the fine and the fine will stand enhanced to ₹30,000/-. Similarly, the substantive sentence of imprisonment for three months is reduced and modified to simple imprisonment for one day till rising of the court. Consequently, 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 a fine of Rs.30,000/- (Rupees Thirty thousand only) within a period of three months from today and the same shall be given to the 1st respondent/ complainant as compensation under

Section 357(1)(b) of the Code of Criminal Procedure. If the petitioner had deposited any amount in the trial court in compliance with the interim order of this Court or appellate court, the same shall be given credit to and the balance alone needs to be paid as fine.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 20th October, 2015 with sufficient proof to show payment of fine.

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