

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

Crl.Rev.Pet.No. 1227 of 2003

AGAINST THE JUDGMENT IN CRL.A.NO. 193/2002 of SESSIONS
COURT, THRISSUR.

AGAINST THE JUDGMENT IN ST 1200/1998 of J.M.F.C.-II,
THRISSUR.

REVISION PETITIONER/APPELLANT/ACCUSED:

SIVAN, S/O. KUNJANDI,
PULIPARAMBIL HOUSE,
AYYANTHOLE,
THRISSUR.

BY ADV. SRI.M.B.PRAJITH

RESPONDENT/RESPONDENTS/COMPLAINANT:

1. SEVEN STAR KURIES AND LOANS,
VIMAL BUILDING, ERINJERI ANGADI,
REPRESENTED BY ITS PARTNER V. KRISHNAKUMAR,
S/O. LAKSHMIKUTTY AMMA, VELAKKATIL HOUSE,
CHETTUPUZHA, THRISSUR.
2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 03-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

ORDER ON CRL.M.A.NO.4897 OF 2003 IN
CRL.R.P.NO.1227 OF 2003:

CLOSED

3/6/2015

SD/- K. HARILAL, JUDGE.

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P.S. to Judge

K. HARILAL, J.

Crl.R.P.No.1227 of 2003

Dated this the 3rd day of June, 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.193 of 2002 on the files of the Sessions Judge, Thrissur. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T.No. 1200 of 1998 on the files of the Judicial First Class Magistrate's Court-II, Thrissur. According to the impugned judgment, the Revision Petitioner is

sentenced to undergo simple imprisonment for 10 days and also directed to pay a sum of ₹30,000/-. In default, the petitioner/accused shall undergo simple imprisonment for a further period of three months.

2. The case of the complainant is that the complainant is a firm conducting chitty and the accused is a subscriber of the chitty. In discharge of the amount defaulted by the accused, the accused issued Ext.P1 cheque for an amount of ₹25,000/- towards the amount due to the complainant. But, when the complainant presented the cheque for encashment, the same was dishonoured and returned for want of sufficient fund. Even though he caused to issue a lawyer's notice, the same was returned as refused. Thus, the accused has committed the offence punishable under Sec.138 of the N.I. Act.

3. In defence, the accused challenged the maintainability of the complaint on the ground that the complainant is not a registered partnership firm;

but it has brought out in evidence that even though the complainant firm was not a registered firm at the time of commencement of the kuri transaction, later, the firm got registered and at the time of filing the complaint, it was a registered firm. Therefore, the court below is justified in rejecting the said contention. Even though the complainant was examined as P.W.1 and Exts.P1 to P6 were marked to discharge the initial burden of proving execution and issuance of the cheque, no rebuttal evidence has been adduced by the accused. Though, during the course of examination, it was suggested that the cheque was not given in the transaction, as stated by the complainant, the accused admitted issuance of the cheque. The only dispute is that the cheque was not issued for the liability, as stated by the complainant. But, he has not disclosed the particulars of the transaction in which he issued the said cheque to the complainant. Thus, he has miserably failed to rebut

the presumption which stood in favour of the complainant. There is no illegality or impropriety in the finding that the accused failed to rebut the presumption.

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. 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. 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.

5. According to the Revision Petitioner, the sentence imposed on the Revision Petitioner is disproportionate with the gravity and nature of the offence. The revision petitioner sought for some time to pay the compensation, if the revision petition is found meritless.

6. 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.

7. 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.

8. 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 four months time to pay the compensation. Similarly, the substantive sentence of imprisonment for 10 days will stand 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 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 Rs.30,000/- (Rupees Thirty thousand only) within a period of four months from today to the 1st respondent as compensation under Sec.357(3) of the Cr.P.C.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered

above on or before 3/10/2015 with sufficient proof to show payment of compensation.

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

The Criminal Revision Petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge