

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

Crl.Rev.Pet.No. 1284 of 2003 ()

Crl.A 260/2002 of III ADDITIONAL SESSIONS JUDGE, ERNAKULAM

CC 429/1998 of J.M.F.C.-II, MUVATTUPZHA

REVISION PETITIONER(S)/APPELLANT/ACCUSED :

SALI.V.A., THADATHIL VEEDU,
KARIMPANA, KOOTHATTUKULAM.

BY ADVS.SRI.P.V.SANTHOSH JOSE
SRI.M.G.KARTHIKEYAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT :

1. MOLLY CHERIAN, PATTATHARAYIL VEEDU,
KOOTHATTUKULAM.
2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1 BY ADVS. SRI.P.V.GEORGE (ONAKKOOR)
SRI.REJI GEORGE
SMT.GEETHA.S (SHANKAR)

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JOSEPH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 04-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No.1284 of 2003

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Dated this the 4th 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.260/2002 on the files of the II Additional Sessions Judge, Ernakulam. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.429/1998 on the files of the Judicial First Class Magistrate's Court-II, Muvattupuzha. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for three months and to pay a compensation of ₹1,00,000/- to the complainant under Section 357(3) Cr.P.C.

2. It is the case of the complainant that the accused borrowed an amount of ₹80,000/- and in discharge of the said amount, the accused had issued Ext.P1 cheque and when the cheque was presented for encashment, the same was dishonoured for want of sufficient funds. In defence, the accused contended that there was no transaction between the complainant and the accused. It is his case that the cheque leaves kept by him in his autorikshaw were stolen away by one Sunil Cherian, the son of PW1 when the said autorikshaw was entrusted with him for driving and that misusing one of those blank cheque leaves, PW1 has created Ext.P1. But no defence evidence was adduced to substantiate the said contention. It is highly improbable and impossible to believe that an account holder will leave such signed blank cheques in his autorikshaw carelessly and casually. No account holder is expected to deal with cheques in such a casual, careless, irresponsible and indifferent manner and such defence is impossible and unbelievable.

3. The learned counsel for the petitioner further submits that the cheque was issued in discharge of a time barred debt. The settled legal position is that even if, the cheque is issued in discharge of a time barred debt, the said cheque will come under the mischief envisaged under Section 138 of the Act. More importantly, the accused had not sent a reply in spite of the receipt of the lawyer's notice demanding huge amount from him. No ordinary prudent man would remain silent in such a situation without sending reply denying the claim raised against him.

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. The learned counsel further sought for some time to pay the compensation as he is unable to raise the said amount forthwith due to paucity of funds.

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, expressing willingness to pay the compensation, 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. Consequently, this Revision Petition will stand disposed of subject to the following terms.

i. The Revision Petitioner shall undergo simple imprisonment for one day till rising of the court.

ii. The Revision Petitioner shall pay an amount of Rs.1,00,000/- (Rupees One lakh only) to the 1st respondent within a period of three months from today as compensation under Section 357(3) of 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 4th September, 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.A to Judge