

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. 1349 of 2003

Crl.A 213/2000 of ADDL.SESIONS (SPL.) COURT, KOTTAYAM
DATED 22-01-2003

CC 630/1998 of J.M.F.C.-I, KANJIRAPPALLY DATED 07-07-2000

REVISION PETITIONER(S)/APPELLANT/ACCUSED :

M.T.THOMAS, S/o.M.D.THOMAS,
MOOLAYIL HOUSE, PONKUNNAM.P.O., KOTTAYAM (DT.)

BY ADVS.SRI.T.R.MADHU
SRI.AJAY JOHN PARAYIL

RESPONDENT(S)/RESPONDENT/COMPLAINANT :

1. STATE OF KERALA, REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.
2. GEORGE JOSEPH, POTTANKULAM HOUSE,
PIGANA, MUNDAKAYAM.P.O., KOTTAYAM (DT.)

R1 BY PUBLIC PROSECUTOR SRI.JIBU.P.THOMAS.

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.1349 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.213/2000 on the files of the Additional Sessions (Spl.) Judge, Kottayam. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.630/1998 on the files of the Judicial First Class Magistrate's Court-I, Kanjirappally. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for one month and to pay a compensation of ₹12,000/- to the complainant under Section 357(3) Cr.P.C.

2. The case of the complainant is that the accused is the proprietor of a printing press and he owed an amount of ₹10,000/-, which was borrowed from him and in discharge of that debt, he had issued Ext.P1 cheque for an amount of ₹10,000/- and when the cheque was presented for encashment, the same was dishonoured and returned for want of sufficient funds. Per contra, in defence, the accused contended that his father was conducting a press by name 'popular press' and at that time, he had issued Ext.P1 cheque as a security to the complainant. There is no money transaction between the complainant and the accused. After analysing the evidence, the courts below observed that except the suggestion put to PW1 raising the said contention, nothing brought out in cross examination to show that cheque was issued by the father of the accused as a security. Whereas, reliable evidence adduced by the complainant is that the said cheque was issued in discharge of a legally enforceable debt and the presumption under

Section 139 and 118(a) of the N.I.Act stood in favour of the complainant.

3. The legal position settled by the Apex Court in **Mulammoottil Consumer Credit Ltd. v. Sreenivasan** (2006 (4) KLT 543) is that mere suggestion in cross examination is not sufficient to rebut the presumption under Sections 139 and 118(a) of the N.I.Act. The said proposition is affirmed by the Apex Court in **Kumar Export v. Sharma Carpets** (2009 (1) KLT 197 SC). In view of the above decisions, I find that there is no illegality or impropriety in the finding that the accused miserably failed to rebut the presumption under Section 138 of the N.I.Act.

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/2nd 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 2nd respondent. So also, it is found that the debt due to the 2nd 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 'two' 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 a compensation of Rs.12,000/- (Rupees Twelve thousand only) to the 2nd respondent within a period of two 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 4th August, 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.Ato Judge