

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

Crl.Rev.Pet.No. 66 of 2004 (C)

CRL.A 173/1999 of ADDL. SESSIONS JUDGE, THALASSERY

CC 508/1996 of J.M.F.C.-I, KANNUR

REVISION PETITIONER/APPELLANT/ACCUSED:

KUTTAPPAN PRAKASHAN S/O.KUTTAPPAN MESTRI,
AGED 42 YEARS, 'SHOBHANALAYAM', PAPINISSERY
AMSOM DESOM, P.O.PAPINISSERY, KANNUR DISTRICT.

BY ADV. SRI.V.RAMKUMAR NAMBIAR

RESPONDENTS/RESPONDENTS/COMPLAINANT:

1. P.V.SHYLAN S/O. RAJAN, AGED 30 YEARS,
NELLANHI HOUSE, PALLIKUNNU P.O., KANNUR.

2. STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADVS. SRI.SUNIL V.MOHAMMED
SRI.P.K.NOUSHAD

R2 BY PUBLIC PROSECUTOR SRI.JIBU.P.THOMAS.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 15-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No.66 of 2004

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Dated this the 15th 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.173/1999 on the files of the Additional Sessions Judge, Thalassery. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.508/1996 on the files of the Judicial First Class Magistrate's Court-I, Kannur. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for six months.

2. The complainant's case is that the accused borrowed an amount of ₹90,000/- from him and in discharge

of the said liability, the accused has drawn and issued Ext.P1cheque for the said amount in favour of him. 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 has neither paid the amount nor sent a reply denying the liability. Thus, he has committed the offence punishable under Section 138 of the N.I.Act.

3. In 313 statement, the accused had admitted the said borrowal and issuance of the cheque. But, according to him, the blank signed cheque was issued as a guarantee only. But, later, he had repaid the entire amount borrowed from the complainant. Needless to say, the burden is heavy on the accused to prove the discharge. But, no evidence has been adduced to prove the discharge. In the above context, the court below is justified in finding that the accused failed to rebut the presumption under the N.I.Act which stood in favour of the complainant. There is no

illegality or impropriety in the said findings.

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, if this revision is found meritless, 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, 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, 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 compensation of Rs.90,000/- (Rupees Ninety thousand only) to the 1st respondent within a period of three months from today. If the petitioner had deposited any amount in the trial court in compliance with the interim order of this Court or the appellate court, the same shall be given credit to and the balance alone needs to be paid as compensation.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 15th 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