

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

Cr1.Rev.Pet.No. 2297 of 2003 (C)

AGAINST THE JUDGMENT IN CRL.A 94/2002 of SESSIONS COURT, MANJERI
DATED 24-07-2003

AGAINST THE JUDGMENT IN ST 9884/2000 of JUDICIAL FIRST CLASS
MAGISTRATE COURT, MALAPPURAM, DATED 20-04-2002

REVISION PETITIONER(S)/APPELLANT/ACCUSED :

M.K.KUNHIMARAKKAR, S/o.KOYA,
MANUMKAMCHERY, ERINGALLUR, VENGARA,
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S)/COMPLAINANT & STATE:

1. K.MUHAMMED ALI, S/o.MUHAMMED MUSLIAR,
VALAKKUDA HOUSE, KANNAMANGALAM WEST,
VENGARA, MALAPPURAM DISTRICT.
2. THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI - 31.

R1 BY ADVS. SRI.T.K.AJITH KUMAR
SRI.K.T.SIDHIQ
SRI.P.VINODKUMAR
SRI.RAJAN VELLOTH

R2 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.2297 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.94/2002 on the files of the Sessions Judge, Manjeri. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T.No.9884/2000 on the files of the Judicial First Class Magistrate's Court, Malappuram. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for one month and to pay fine of ₹5,000/- and in default, to undergo simple imprisonment for 15 days.

2. The case of the complainant is that the accused borrowed a sum of ₹15,200/- promising to repay the same within one month and in discharge of the said amount, Ext.P1 cheque for an amount of ₹15,200/- was issued in his favour. When the cheque was presented for encashment, the same was dishonoured for want of sufficient funds. In defence, the accused contended that an amount of ₹4,000/- was due from him to the complainant and there is no other transaction with the complainant. Except the above bare statement, there is absolutely nothing before the court to substantiate the above contention of the accused. When PW1 was in the box, the defence counsel has not even made any suggestion in this regard. In the absence of any evidence, the court below can be justified in finding that the accused miserably failed to rebut the presumption under Section 118(a) and 139 of the N.I.Act. There is no illegality in the above findings.

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, I am inclined to grant 'two' months time to pay the fine. Similarly, the substantive sentence of imprisonment for one month 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 fine of Rs.15,200/- (Rupees Fifteen thousand Two hundred only) within a period of two months from today and the same shall be given to the 1st respondent/ complainant as compensation under Section 357(3) 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 3rd August, 2015 with sufficient proof to show payment of fine.

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