

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

Crl.Rev.Pet.No. 2314 of 2003

CRL.A 123/2001 of I ADDL.SESIONS COURT, THIRUVANANTHAPURAM
ST 2411/1996 of J.F.C.M.COURT-III, THIRUVANANTHAPURAM

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REVISION PETITIONER(S)/APPELLANT/ACCUSED:

PRASANNA, AGED 42 YEARS,
D/O.VELAPPAN, PROPRIETRESS,
M/S.P.R.DRESSES, MARKET ROAD,
KAZHAKKUTTOM, THIRUVANANTHAPURAM.

BY ADV. SRI.BIJU HARIHARAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. MURUKAN @ MURUKESAN,
C.S.L. BHAVAN,
KAZHAKKUTTOM, THIRUVANANTHAPURAM.
2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.MADHU BEN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 04-02-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Crl.R.P. No.2314 of 2003

Dated this the 4th day of February, 2015

O R D E R

The revision petitioner is the accused in S.T. No.2411 of 1996 on the files of the Judicial First Class Magistrate's Court-III, Thiruvananthapuram as well as the appellant in Crl.Appeal No.123 of 2001 on the files of the I Additional Sessions Judge, Thiruvananthapuram. She was prosecuted for the offence punishable under Section 138 of the N.I. Act on a complaint filed by the 1st respondent herein. After trial, she was found guilty of the said offence and convicted thereunder. She was sentenced to undergo simple imprisonment for three months under Section 138 of the N.I. Act and to pay an amount of Rs.65,000/- as compensation under Section 357(3) of the Cr.P.C. Though she had preferred the above appeal, the appellate court also confirmed the conviction and modified the sentence to simple imprisonment for one month only. This revision petition is filed challenging the legality and propriety of the concurrent findings of conviction and sentence on various grounds.

2. It is the specific case of the 1st respondent that the revision petitioner had borrowed a sum of Rs.25,000/- on 24/6/1995 and Rs.40,000/- on 1/10/1995 from him and in discharge of the said debt the revision petitioner issued Ext.P1 cheque. When the cheque was presented for encashment, the same was got dishonoured and returned for want of sufficient funds. Though the 1st respondent had caused to issue lawyer's notice, the revision petitioner had neither responded to it nor has she paid the amount demanded in the notice. Thus, she has committed an offence punishable under Section 138 of the N.I. Act.

3. To discharge the initial burden of proving execution and issuance of the cheque, the 1st respondent was examined as P.W.1 and Exts.P1 to P7 were marked. P.Ws 2 and 3 were examined as witnesses to prove the dishonour of the cheque. Thus, the 1st respondent has successfully discharged the initial burden of proving the execution and issuance of the cheque and thereby the courts below concurrently found that the presumption under Sections 139 and 118(a) of the N.I. Act would stand in favour of the 1st respondent.

4. To rebut the said presumption under Sections 139 and 118(a) of the N.I. Act, no evidence had been produced by the

revision petitioner. The first appellate court also reappreciated the evidence adduced by the 1st respondent and concurred with the finding of the trial court that the 1st respondent has successfully discharged the initial burden of proof. In the absence of any contra evidence so as to rebut the said presumption, the courts below can be justified in arriving at a finding that the revision petitioner miserably failed to discharge the presumption under Sections 139 and 118(a) of the N.I. Act, which stood in favour of the 1st respondent. There is no illegality or impropriety in the above said finding and I do not find any reason to interfere with the concurrent findings of conviction and sentence entered by the court below.

5. Coming to the sentence, though the trial court sentenced the revision petitioner to undergo three months imprisonment and to pay Rs.65,000/- as compensation under Section 357(3) of the Cr.P.C. to the complainant, the appellate court modified and reduced the substantive sentence of simple imprisonment by one month only and set aside the direction to pay compensation of Rs.65,000/- to the complainant on the reason that the complainant/1st respondent has filed a civil suit on the dishonour of the cheque and obtained a money decree against the revision

petitioner. But from the impugned judgment it is not discernible whether the complainant/1st respondent has executed the decree. If he has executed the money decree, one month imprisonment is excessive and harsh, considering the nature of offence under Section 138 of the N.I. Act, particularly, in view of the decision of the Apex Court in **Kaushalya Devi Massand v. Roopkishore [AIR 2011 SC 2566]** and **Vijayan v. Baby [2011(4) KLT 355]**. Hence, I am inclined to modify the sentence and I do so. In supersession of the modified sentence imposed by the Apex 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. She shall pay a compensation of Rs.65,000/- to the complainant/1st respondent and produce evidence thereof or produce evidence to show that the complainant/1st respondent has realised the cheque amount in execution of the money decree obtained against the revision petitioner, within a period of three months from today. If the trial court is satisfied on evidence that cheque amount was realised in execution of the money decree, she is not liable to pay

compensation as ordered above. She shall undergo the substantive sentence of simple imprisonment for one day also within three months.

iii. In default, she shall undergo simple imprisonment for one month.

In the result, this revision petition will stand dismissed.

Sd/–
K.HARILAL, JUDGE

okb.