

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. 2338 of 2003 (C)

CRL.A 372/2001 of II ADDL. SESSIONS COURT, PALAKKAD
DATED 17-06-2003

ST 1307/1998 of JUDICIAL FIRST CLASS MAGISTRATE COURT, MANNARKAD
DATED 28-08-2001

REVISION PETITIONER(S)/APPELLANT/ ACCUSED :

P.K.GOPALAKRISHNAN, AGED 45 YEARS,
S/o.KESAVAN VIDYAR, PADINJARAKKARA HOUSE,
NAYADIKUNNU, MANNARKKAD.

BY ADV. SRI.K.P.MUJEEB

RESPONDENT(S) :

1. JOHN JACOB, S/o.V.G.JOHN, VENATTU HOUSE,
MANCHAMTHODU, THACHAMPARA POST MANNARKKAD.
2. STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.C.E.UNNIKRISHNAN

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

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

STU

K.HARILAL, J.

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CrI.R.P.No.2338 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.372/2001 on the files of the II Additional Sessions Judge, Palakkad. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T.No.1307/1998 on the files of the Judicial First Class Magistrate's Court, Mannarkkad. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for three months and to remit ₹1,25,000/- under Section 357 Cr.P.C. If the said amount is realised, it is to be given to the

complainant under Section 357(3) Cr.P.C.

2. The case of the complainant is that the accused borrowed an amount of ₹1,00,000/- from the complainant on 31.3.1997 with a condition that he will repay the said amount within six months and that since he has not repaid the said amount on demand, he had issued Ext.P1 cheque to the complainant for an amount of ₹1,25,000/- in discharge of the said amount. When the cheque was presented for encashment, the same was dishonoured for want of sufficient funds.

3. In defence, the accused contended that a false case is foisted against him by using a blank signed cheque issued by him to one Muraleedharan. But, he has not adduced any evidence or produced any materials to substantiate the said contention at least with the preponderance of probabilities. Except the suggestion to PW1 with regard to this aspect, there is no material to show that the case put forward by the accused is probable or believable. There is no illegality

in the findings that the accused miserably failed to rebut the presumption which stood in favour of the complainant under Section 139 and 118(a) of the N.I.Act.

4. It is also contended that the accused had filed C.M.P.No.4327/2001 to recall PW1 for further examination. The court below dismissed that application on the reason that there was no specific purpose for which the complainant was sought to be recalled and examined. In the absence of reasons, the dismissal of the said application also is justifiable.

5. 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.

6. 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.

7. 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.

8. The Revision Petitioner contended 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.

9. Similarly, the substantive sentence imposed on the revision petitioner is too harsh and excessive. 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.

10. 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.

11. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above, 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, 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 Rs.1,25,000/- (Rupees One Lakh Twenty Five thousand only) to the 1st respondent as compensation under Section 357(3) of the Cr.P.C within a period of three 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 3rd 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 allowed in part.

Sd/-
K.HARILAL,
JUDGE.

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P.A to Judge