

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. 2340 of 2003 (C)

CRIMINAL APPEAL 964/2002 of ADDITIONAL SESSIONS COURT (ADHOC-1),
ERNAKULAM DATED 16-07-2003

CC 1150/1999 of ADDL.CHIEF JUDICIAL MAGISTRATE COURT (ECONOMIC
OFFENCES), ERNAKULAM DATED 28-11-2002

REVISION PETITIONER(S)/APPELLANTS/ACCUSED :

1. M/S.C.K.THOMAS & COMPANY, CHEMPAKASSERY,
RESIDENCY ROAD, KADAPPAKADA, QUILON
REPRESENTED BY ITS MANAGING PARTNER,
SRI.MANUEL THOMAS, CHEMPAKASSERY, RESIDENCY
ROAD, KADAPPAKADA, QUILON.
2. SRI.MANUEL THOMAS, S/o.LATE MR.C.K.THOMAS,
MANAGING PARTNER, C.K.THOMAS & COMPANY,
CHEMPAKASSERY, RESIDENCY ROAD, KADAPPAKADA, QUILON.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENT(S)/COMPLAINANT & STATE :

1. STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.
2. MUTHOOT LEASING AND FINANCE LTD., PREETHI
BUILDINGS, VYTTILA, KOCHI - 19, REPRESENTED BY
ITS ASSISTANT BRANCH MANAGER AND POWER OF ATTORNEY
HOLDER, SRI.A.BALAKRISHNAN MENON, S/o.M.P.APPU MENON,
PREETHI BUILDINGS, VYTTILA.

R1 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:

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K.HARILAL, J.

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CrI.R.P.No.2340 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.964/2002 on the files of the Additional Sessions Judge (Adhoc-I), Ernakulam. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.1150/1999 on the files of the Additional Chief Judicial Magistrate's Court, Economic Offences, Ernakulam. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for two months and fine of ₹78,000/- to A3. In default, to

undergo simple imprisonment for two months. If the fine amount is realised, pay the same as compensation.

2. The main contention raised by the accused is that no statutory notice under Section 138(b) had been issued to the 2nd respondent. Therefore, the prosecution is not maintainable. Going by the impugned judgment, it is seen that the complainant has proved that notice had been issued and received by the 1st accused - the Company, of which, the 2nd accused is the Managing Partner. The legal position well settled by this Court as well as the Appellate Court is that notice to the company is mandatory and the said notice shall be deemed to be the notice against all the Directors of the company. No individual notice need be sent against all the partners of the company. I find no illegality or impropriety in the findings of the courts below rejecting the contentions raised by the accused.

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/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.P2 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 compensation as he is unable to raise the said amount forthwith due to paucity of funds, it this Court confirms the concurrent findings of the courts below.

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 'three' months time to pay the fine. 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 an amount of Rs.80,000/- (Rupees Eighty Thousand only) to the complainant/2nd 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 4th 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.Ato Judge