

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

Crl.Rev.Pet.No. 520 of 2004 (D)

AGAINST THE JUDGMENT IN CRL.A.NO. 886/2001 of II
ADDITIONAL SESSIONS COURT,ERNAKULAM DATED 18-11-2003.

AGAINST THE JUDGMENT IN ST 150/1999 of J.M.F.C.-I, KOCHI
DATED 20-12-2001

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

RAMACHANDRAN, PROPRIETOR,
SARATH EXPORTS, KALAPURAKKAL BUILDINGS, EDACOCHI.

BY ADVS.SRI.T.K.PANKAJASHAN PILLAI
SRI.SAJI PANKAJAKSHAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

1. P.K. SUKUMARAN, PARAMBIL HOUSE,
OCHANTHURUTH.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682 031.

BY PUBLIC PROSECUTOR SRI.JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 09-09-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.520 of 2004

Dated this the 9th day of September, 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 in Criminal Appeal No.886 of 2001 on the files of the II Additional Sessions Judge, Ernakulam. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T. No.150 of 1999 on the files of the Judicial First Class Magistrate's Court-I, Kochi-5. According to the impugned judgment, the Revision Petitioner is

sentenced to undergo simple imprisonment for a period of three months and to pay a compensation of ₹73,699/- to the complainant.

2. The complainant's case is that in discharge of a legally enforceable debt, the accused had drawn and issued Ext.P2 cheque for an amount of ₹73,699/- to the complainant and when he presented the said cheque for encashment, the same was dishonoured and returned for want of sufficient funds. In spite of the receipt of the statutory notice under Sec.138(b) of the N.I. Act demanding the cheque amount, the accused has not paid the cheque amount; nor did he send a reply notice denying the liability under the said cheque. To discharge the initial burden, the complainant and the Bank Manager were examined as P.Ws.1 and 2 and Exts.P1 to P7 were marked. After evaluating the aforesaid evidence, the trial court arrived at a finding that the complainant has successfully discharged the initial burden to prove, execution and issuance of the cheque and thereby the

presumptions under Secs.139 and 118(a) of the N.I. Act stood in favour of the complainant. In appeal, the Sessions Court also re-appreciated the aforesaid evidence and affirmed, as such, without any interference.

3. What remains to be considered is whether the accused had succeeded in rebutting the presumptions which stood in favour of the complainant. No evidence, either oral or documentary, had been adduced by the accused. But, in statement under Sec.313 of the Cr.P.C., he admitted the issuance of the cheque; but contended that he had repaid a sum of ₹45,000/- on 20/12/1998 and the said amount was not credited towards the cheque amount. It was also contended that the cheque was issued as security only. Though he contended that he had paid ₹45,000/-, no evidence has been adduced to show that he repaid the said amount. When the issuance of the cheque stands admitted, it was incumbent upon the accused to substantiate his contention with standard of

preponderance of probabilities. But, he miserably failed to probabilise his version or to improbabilise the complainant's case. In the above view of the matter, the court below is justified in finding that the accused miserably failed to rebut the presumptions under Secs.139 and 118(a) of the N.I. Act. There is no illegality or impropriety in the above finding. The substantive sentence of simple imprisonment for three months will stand reduced and modified to simple imprisonment for one day till rising of the court and three months time is given to pay the compensation to the complainant.

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. 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.P2 cheque was duly executed and issued in discharge of the said debt. 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. 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 Sec.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 of imprisonment 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 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 simple imprisonment for a period of three months is reduced and modified to simple imprisonment for one day till rising of the court and three months time is given to pay the compensation to the complainant. Consequently, in supersession of the sentence imposed by the trial court and modified by the appellate court, the revision/accused 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.73,699/- (Rupees Seventy three thousand six hundred and ninety nine only) to the complainant/1st respondent as compensation within a period of three months from today under Sec.357(3) of the 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 9/12/2015 with sufficient proof to show payment of compensation.

iv. In default, the Revision Petitioner shall undergo simple imprisonment for a period of three months.

v. If he had deposited any amount in the trial court towards compensation or fine, the same shall be given credit to and the balance alone needs to be paid as compensation or fine, as the case may be, and in that event, the complainant is allowed to realise such deposit from the court.

The Criminal Revision Petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge