

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

Crl.Rev.Pet.No. 2457 of 2003 (C2)

CRL.A 102/2001 of SESSIONS COURT, MANJERI  
CC 158/1998 of J.M.F.C.-II, PERINTHALMANNA

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REVISION PETITIONER(S)/APPELLANT/ACCUSED:

O.P.ABDUL AZEEZ, S/O. O.P.MUHAMMED,  
VELLAYOOR AMSOM, AMAPOYIL DESOM,  
MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. M.T.ABOOBACKER, S/O.M.T.ALAVI,  
MANJERITHODIKA, CHANTHANGOTTUPURAM AMSOM,  
EDAPALAM DESOM, MALAPPURAM DISTRICT.
2. STATE OF KERALA,  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY  
HEARD ON 08-06-2015, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

OKB

K.HARILAL, J.

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Crl.R.P. No.2457 of 2003  
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Dated this the 8<sup>th</sup> day of June, 2015.

O R D E R

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.102/2001 on the files of the court 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 C.C.No.158/1998 on the files of the Judicial First Class Magistrate's Court-II, Perinthalmanna. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for two months only.

2. 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.

3. The courts below had concurrently found that the complainant/1<sup>st</sup> respondent had successfully discharged the 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 1<sup>st</sup> respondent. So also, it is found that the debt due to the 1<sup>st</sup> respondent was a legally enforceable debt and Ext.Pl cheque was duly executed and issued in discharge of the said debt.

4. 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 at. Therefore, I am not inclined to re-appreciate entire evidence once again and I confirm the concurrent findings of conviction.

5. 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.

6. 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 be put in great hardship.

7. 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 v. 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.

8. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, expressing willingness to pay the compensation, I am inclined to grant two 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, 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 compensation of Rs.30,000/- (Rupees Thirty thousand only) to the 1<sup>st</sup> respondent/complainant, within a period of two months from today.
- iii. The revision petitioner shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 10.8.2015 with sufficient proof to show payment of compensation. If the revision petitioner had paid any amount in compliance with the interim direction of this Court dtd.25/9/2003, the balance alone need be paid as compensation. In that event the 1<sup>st</sup> respondent is allowed to withdraw that amount.
- iv. In default, the revision petitioner shall undergo simple imprisonment for a period of one month.

The Criminal revision petition is disposed of accordingly.

Sd/-  
K. HARILAL, JUDGE

okb.