

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

Crl.Rev.Pet.No. 732 of 2004 (B)

AGAINST THE JUDGMENT IN CRL.A 217/2003 of ADDITIONAL SESSIONS
COURT (AD HOC-I), ERNAKULAM DATED 02-12-2003

AGAINST THE JUDGMENT IN CC 1052/1998 of ADDL.C.J.M.COURT,
ERNAKULAM DATED 04-02-2003

....

REVISION PETITIONER(S)/APPELLANTS/ACCUSED:

1. MARIA CEMENTS, MATHA SHOPPING COMPLEX,
TRIPUNITHURA, ERNAKULAM, REP. BY THE 2ND APPELLANT.

2. PAULOSE, PARTNER, MARIA CEMENTS,
MATHA SHOPPING COMPLEX, TRIPUNITHURA, ERNAKULAM.

BY ADVS.SRI.JOSE KURIAKOSE (VILANGATTIL)
SRI.JOSEPH A.VADAKKEL

RESPONDENT(S)/IST RESPONDENT/COMPLAINANT:

1. MALABAR CEMENT LIMITED, REP. BY ITS
HEAD OFFICE AT WALAYAR AND BRANCH OFFICE
AT MARKET ROAD, NORTH END, ERNAKULAM,
REP. BY ITS SALES MANAGER-INCHARGE B.RAJENDRAN.

2. STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-31.

R1 BY ADV. SRI.B.S.KRISHNAN (SR.)

R1 BY ADV. SRI.K.ANAND (A.201)

R1 BY ADV. SMT.LATHA KRISHNAN

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 23-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Cr1.R.P. No.732 of 2004

Dated this the 23rd 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 petitioners for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act') in Criminal Appeal No.217/2003 on the files of the court of the Additional Sessions Judge (Ad hoc-I), Ernakulam. The above appeal was filed challenging the judgment finding that the revision petitioners are guilty of the said offence, passed in C.C.No.1052/1998 on the files of the Judicial First Class Magistrate's Court, Ernakulam. According to the impugned judgment, the second revision petitioner was sentenced to undergo simple imprisonment for one day till rising of the court and to pay a compensation of Rs.1,05,000/ to the complainant and in default to

undergo simple imprisonment for one month. No separate sentence is awarded to the first revision petitioner firm.

2. The learned counsel for the revision petitioners 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 petitioners 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/1st respondent had successfully discharged the initial burden of proving execution and issuance of the cheque; whereas the revision petitioners 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.

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 the 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 petitioners submits that the sentence imposed on the second 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. 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.

7. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, the second revision petitioner is given one month time to pay the compensation. Consequently, this revision petition will stand disposed of subject to the following terms:

- i. The second revision petitioner shall undergo simple imprisonment for one day till rising of the court.
- ii. He shall pay a compensation of Rs.1,05,000/-

(Rupees One lakh and five thousand only) to the 1st respondent/complainant, within a period of one month from today under Section 357(3) of the Cr.P.C.

- iii. He shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 24/7/2015 with sufficient proof to show payment of compensation.
- iv. In default, he shall undergo simple imprisonment for a period of one month.
- v. If he had deposited any amount in compliance with the interim order of this Court dated 13/12/2004, the said amount shall be given credit to and the balance alone needs to be paid as compensation. In that event, the complainant is allowed to withdraw such deposit if any.

The Criminal revision petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.