

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

Crl.Rev.Pet.No. 2671 of 2003 ()

AGAINST THE JUDGMENT IN CRL.A 654/1999 of ADDL. DISTRICT &
SESSIONS COURT, FAST TRACK (AD HOC)-II, KOZHIKODE DATED 19-12-
2002

AGAINST THE JUDGMENT IN CC 17/1996 of J.F.C.M.COURT -V,
KOZHIKODE DATED 26-11-1999

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

K. SIDDIQUE, S/O.KUTTIKKA,
CHOPPAMKANDI ROAD,
MANAYILTHAZHAM PARAMBA,
NALLALAM (P.O.), KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. M. SREEKUMAR, S/O. DAMODHARAN,
PALATH HOUSE, KUTHIRAVATTOM (P.O.),
KOZHIKODE.
2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 09-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Crl.R.P. No.2671 of 2003

Dated this the 8th day of July, 2015.

O R D E R

The revision petitioner is the accused in C.C.No.17/96 on the files of the Judicial First Class Magistrate's Court-V, Kozhikode, as well as the appellant in Crl.A. No.654/99 on the files of the Additional District and Sessions Court, Fast Track (Ad hoc)-II, Kozhikode. He was prosecuted for the offence punishable under Section 138 of the N.I. Act on a complaint filed by the first respondent herein. After trial, he was found guilty of the said offence and convicted thereunder. He was sentenced to undergo simple imprisonment for six months. Though he preferred the above appeal, the appellate court also confirmed the conviction and sentence as such, without any interference. This revision petition is filed challenging the concurrent findings of

conviction and sentence.

2. Though this revision petition is filed on various grounds challenging the concurrent findings of conviction and sentence, the learned counsel for the revision petitioner submits that the challenge in this revision will be confined to sentence alone. According to the learned counsel, the sentence imposed on the revision petitioner is disproportionate with the nature and gravity of the offence and conviction is made in contravention to the propositions laid down by the Apex Court in various decisions. It is also submitted that in compliance with the interim order of this Court dated 15.10.2003 he had already deposited the cheque amount before the Magistrate's Court and he is ready to pay the said cheque amount as compensation to the complainant. To substantiate the above contention, the learned counsel drew my attention to the copy of the receipt dated 21.10.2003 issued by the Judicial First Class Magistrate's Court-V, Kozhikode, which shows that Rs.15,000/- has been deposited on 21.10.2003.

3. 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. Therefore, in supersession of the sentence imposed by the trial court and modified by the appellate court, the revision petitioner will stand sentenced as follows:

The revision petitioner shall pay a fine of Rs.15,000/- (Rupees Fifteen thousand only) and the same shall be given to the complainant as compensation under Section 357(1)(b) of the Cr.P.C. In

view of the fact that he had already deposited the said amount in compliance with the direction of this Court, the learned Magistrate is directed to convert the said deposit to fine payable as compensation to the complainant and the complainant is allowed to realise the said amount from the Magistrate's court.

This criminal revision petition is disposed of.

Sd/—
K. HARILAL, JUDGE

okb.