

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

Cr1.Rev.Pet.No. 388 of 2006

Cr1.A 142/2004 of ADDL. DISTRICT & SESSIONS COURT (ADHOC)-II,
THODUPUZHA DATED 29-11-2005

CC 654/1998 of J.M.F.C., PEERMADE DATED 17-04-2004

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

JAYAMOHAN, S/O.BALAKRISHNAN,
ABHILASH BHAVAN, ELAPPARA, PEERMADE
IDUKKI DT.

BY ADV. SRI.TITUS MANI VETOM

RESPONDENT(S)/RESPONDENTS IN APPEAL/COMPLAINANT:

1. BABY THOMAS, ESTATE STAFF QUARTERS,
FAIR FIELD DIVISION, TYFORD ESTATE, ELAPPARA
PEERMADE, IDUKKI DT.

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

R1 BY ADVS. SMT.A.K.PREETHA

SRI.M.R.RAJESH

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 30-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No.388 of 2006

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Dated this the 30th 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.142/2004 on the files of the Additional District & Sessions Judge (Adhoc)-II, Thodupuzha. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.654/1998 on the files of the Judicial First Class Magistrate's Court, Peermade. 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 ₹30,000/- to the complainant under

Section 357(3) of the Cr.P.C. In default, to undergo simple imprisonment for a period of three months.

2. The complainant's case is that, the accused borrowed an amount of ₹30,000/- from him and in discharge of the said debt, on 11.5.1998, accused gave Ext.P1 cheque drawn on State Bank of Travancore, Elappara Branch for the said amount and when the cheque was presented for encashment, the same was dishonoured and returned for want of sufficient funds. Going by the impugned judgment, it is seen that the accused has no consistent case at all in defence. As regards the question, how the cheque happened to be in the possession of the complainant, the accused had more than one version and those versions are mutually destructive and rendered themselves unreliable. At one instance, he has put forward a contention that cheque was issued as a signed blank cheque to the complainant. But another instance, his case is that he has no account in State Bank of Travancore, to which Ext.P1 cheque leaf was issued from the bank. The

Manager of State Bank of Travancore, Elappara Branch was examined as PW2 and it stands proved that the cheque was issued by the accused and the same was drawn on the account maintained by him in the said bank. Thus, the accused had miserably failed to rebut the presumption which stood in favour of the complainant under Section 139 and 118(a) of the N.I.Act. There is no illegality or impropriety in any of the findings in the impugned judgment.

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/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.P1 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. 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.

7. Similarly, the substantive sentence imposed on the revision petitioner is too harsh and excessive. 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 '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, in supersession of the sentence imposed by the trial court and confirmed by the appellate court, 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 a compensation of Rs.30,000/- (Rupees Thirty thousand only) to the complainant/1st respondent within a period of 'two' months from today. If the petitioner had deposited any amount in the trial court in compliance with the interim order of this Court or appellate court, the same shall be given credit to and the balance alone needs to be paid as compensation.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 1st September, 2015 with sufficient proof to show payment of compensation .

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.

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P.Ato Judge