

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

Crl.Rev.Pet.No. 2725 of 2003 (B1)

AGAINST THE JUDGMENT IN CRL.A 427/2002 of ADDL. SESSIONS
COURT,KOTTAYAM DATED 26-07-2003

AGAINST THE JUDGMENT IN CC 453/2002 of C.J.M.,KOTTAYAM DATED
27-09-2002

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REVISION PETITIONER(S)/APPELLANT/ACCUSED:

STEPHEN Zachariah,
MANNITHOTTATHIL, MUNDAKAYAM P.O.,
KOTTAYAM DISTRICT.

BY ADV. SRI.T.A.UNNIKRISHNAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

1. M/S.MAHARASHTRA APEX CORPORATION LTD.,
REGISTERED OFFICER SYNDICATE HOUSE,
MANIPAL-576119, REP. BY ITS
POWER OF ATTORNEY HOLDER JOBIN GEO,
MOONGAMACKAL, KANJIRAMATTOM P.O., KOTTAYAM.
2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.S.R.DAYANANDA PRABHU

R2 BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 09-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Crl.R.P. No.2725 of 2003

Dated this the 9th 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.427/2002 on the files of the court of the Additional Sessions Judge, Kottayam. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in C.C.No.453/2002 on the files of the Judicial First Class Magistrate's Court, Kottayam. According to the impugned judgment, the revision petitioner was sentenced to pay a fine of Rs.60,000/- and out of the said fine amount, Rs.58,000/- was ordered to be paid to the complainant as compensation and in default to undergo simple

imprisonment for three months.

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/1st 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 1st respondent. So also, it is found that the debt due to the 1st 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 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. 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.

6. The learned counsel for the revision petitioner sought for some time to pay the fine amount. Having regard to the above submission the revision petitioner is given three months time to pay the fine amount. Consequently, this revision petition will stand disposed of subject to the following terms:

- i. The revision petitioner shall pay a fine of Rs.58,000/- (Rupees Fifty eight thousand only) within a period of three months from today and the same shall be given to the complainant as compensation under Section 357(1)(b) of the Cr.P.C. If he had deposited any amount in compliance with the direction of this court, the said amount can be given credit to and the balance alone need be deposited as fine.
- ii. In default, he shall undergo simple imprisonment for a period of two months.

The Criminal revision petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.