

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

Crl.Rev.Pet.No. 2768 of 2003 ()

CRL.A 120/2002 of ADDL. SESSIONS COURT, N.PARAVUR
CC 313/1998 of J.F.C.M.COURT-I, ALUVA

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

S. SATHYAN, S/O. SREEDHARAN,
SREEVILASAM, THAZHUTHALA,
KOTTIYAM P.O., KOLLAM DISTRICT.

BY ADVS.SRI.R.PADMARAJ
SRI.BIJU HARIHARAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT/STATE/ADDL.R3:

1. K.K.CHANDRAN PILLAI (DIED)
VELLIKUZHI VEEDU, PADINJARE KADUNGALLOOR,
ALUVA, ERNAKULAM DISTRICT.
2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

ADDL.R3:

REKHA S. NAIR, D/O.LATE K.K.CHANDRAN PILLAI,
VALLIKUZHI VEEDU, PADINJARE KADUNGALLOOR,
ALUVA, ERNAKULAM DISTRICT.
(IMPLEADED AS ADDL.3RD RESPONDENT AS PER ORDER DATED
12.6.2015 IN CRL.M.A.3203/15 IN CRL.R.P.2768/03)

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB
R1&ADDL.R3 BY ADV. SRI.K.SHRIHARI RAO
R1&ADDL.R3 BY ADV. SMT.N.SHOBHA
R1&ADDL.R3 BY ADV. SRI.A.S.SREEKANTH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 20-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Crl.R.P. No.2768 of 2003

Dated this the 20th day of July, 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.120/02 on the files of the court of the Additional Sessions Judge, N.Paravur. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in C.C.No.313/98 on the files of the Judicial First Class Magistrate's Court-I, Aluva. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for six months under Section 138 of the N.I. Act.

2. The complainant's case was that the accused had borrowed an amount of Rs.54,000/- from him and in discharge of the said liability, he had drawn and issued Ext.Pl cheque in his favour and that on presentation for encashment got dishonoured and returned for want of sufficient funds.

3. The accused, when questioned under Section 313 Cr.P.C., stated that he does not know the complainant and he has not given cheque to him. The accused was conducting a chitty while he was in Gulf and the son-in-law of the complainant was a subscriber to that chitty. In the said transaction, the accused availed a loan from the son-in-law of the complainant and issued Ext.Pl cheque as a security. Even though the said amount was repaid, the son-in-law of the complainant has not returned the cheque and that cheque is misused for instituting the complaint against the accused. Though such a contention was raised, no evidence has been adduced to substantiate the said contention. More over, he did not mount the

box to speak about the transaction alleged by him. That apart, no reply notice has been sent raising the said alternative contention raised in defence. Thus, the accused miserably failed to rebut the presumption under Sections 118(a) and 139 of the N.I. Act, which stood in favour of the complainant. There is no illegality or impropriety in the finding that the accused failed to rebut the presumption.

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 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, if this revision petition is found meritless.

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 and in the light of the decisions quoted above, the revision petitioner is given three months time to pay the compensation. Similarly, the substantive sentence of imprisonment for six months 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.54,000/- (Rupees Fifty four thousand only) to the additional 3rd respondent within a period of three 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 20.10.2015 with sufficient proof to show payment of compensation.
- iv. In default, the revision petitioner shall undergo simple imprisonment for a period of one month.
- v. If the revision petitioner had deposited any amount in the trial court, in compliance with the direction of this Court or appellate court, that amount shall be given credit to and the balance alone need be paid as compensation. In that event, the additional 3rd respondent is allowed to realise such deposit, if any.

The Criminal revision petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.