

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

Crl.Rev.Pet.No. 2876 of 2003 ()

CRL.A 192/2002 of I ADDL. SESSIONS COURT, THRISSUR
DATED 07-10-2003

CC 1004/1999 of J.M.F.C.-III, THRISSUR DATED 30-04-2002

REVISION PETITIONER(S)/APPELLANT/ACCUSED :

K.B.RAJU, S/o.K.R.BALAN, THIRUVATHIRA,
KOORIKUZHI DESOM, KAIPAMANGALAM VILLAGE,
KODUNGALLUR TALUK.

BY ADV. SRI.K.J.MOHAMMED ANZAR

RESPONDENT(S)/RESPONDENTS/STATE & COMPLAINANT:

1. STATE OF KERALA, REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
2. SALIM SATHAR, S/o.K.G.SATHAR, SANGEETH
LAMEX ARCADE, M.O.ROAD, THRISSUR.

R2 BY ADV. SRI.BABU.S.NAIR.

R1 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 10-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No.2876 of 2003

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Dated this the 10th 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.192/2002 on the files of the I Additional Sessions Judge, Thrissur. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.1004/1999 on the files of the Judicial First Class Magistrate's Court-III, Thrissur. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for three months and to pay a compensation of ₹2 lakhs and in default of payment of which, to undergo simple

imprisonment for three months.

2. The complainant's case is that the accused had availed a loan of ₹2 lakhs on 24.4.1998 and in discharge of the said liability, he had issued Ext.P1 cheque dated 10.12.1998 for an amount of ₹ 2 lakhs in favour of the complainant.

3. In cross examination of the complainant, in defence, the accused made an attempt to bring home a case that he has share in a partnership business with the complainant and in connection with the business transaction, he had entrusted Ext.P1 cheque with the complainant as a security and the said cheque which was given as security has been misused for prosecuting him. But, in 313 statement, the accused had put up a case that Ext.P1 blank signed cheque, which was kept by him in his office and the same was removed by the complainant and present complaint was lodged by misusing the cheque which was healthily removed from his custody. Thus, the defence plea raised in answer to the question under 313 statement and put as a suggestive question during the cross

examination of the complainant are mutually opposed and destructive. In the absence of a consistent case as to how Ext.P1 cheque happened to be in the possession of the complainant, it can be held that the accused miserably failed to rebut the presumptions which stood in favour of the complainant. Though he contended that Ext.P6(a) shows the withdrawal of his share in the partnership business only, no evidence has been adduced to prove his investment of share in the partnership business. In the absence of such evidence, it could be reasonably presumed that Ext.P6(a) proves the borrowal of ₹ 2 lakhs from the complainant. There is no illegality or impropriety in the finding that the accused miserably failed to rebut the presumption under Sections 139 and 118(a) of the N.I.Act.

4. 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.

5. The courts below had concurrently found that the complainant/2nd 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 2nd respondent. So also, it is found that the debt due to the 2nd respondent was a legally enforceable debt and Ext.P1 cheque was duly executed and issued in discharge of the said debt.

6. 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.

7. 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.

8. 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 put in great hardship.

9. 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.

10. 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 'three' 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 on the revision petitioner 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.2,00,000/- (Rupees Two Lakhs only) to the 2nd respondent/ complainant within a period of three months

from today under Section 357(3) of the Cr.P.C. If he has deposited any amount in the Trial Court in compliance with the interim order of this Court, the said deposit shall be given credit to and the balance alone needs to be paid as compensation. In that event, the complainant is allowed to realise the said deposit from the court.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 10th September, 2015 with sufficient proof to show payment of compensation .

iv. In default, the Revision Petitioner shall undergo simple imprisonment for a period of two months.

The Criminal Revision Petition is disposed of accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge