

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. 2886 of 2003

Crl.A 39/1997 of ADDL. SESSIONS COURT (ADHOC I), THALASSERY,
DATED 23-08-2003

STC 225/1994 of JUDICIAL FIRST CLASS MAGISTRATE (MUNSIFF) COURT,
THALIPARAMBA, DATED 31-01-1997

REVISION PETITIONER(S)/APPELLANT/ACCUSED :

K.MOHAMMAD ALI, S/o.AHAMED, AGED 46 YEARS,
PADOOR ROAD, P.O.PARAVANADUKKAM, KASARGOD.

BY ADVS.SMT.DAISY THAMPI
SMT.MARY BEENA JOSEPH

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE :

1. S.AHMED KUTTY, S/o.MOIDEEN KUTTY,
SAIDARAKATH HOUSE, TALIPARAMBA.P.O.
KANNUR DISTRICT.
2. THE STATE OF KERALA, REP. BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADVS. SRI.P.P.RAMACHANDRAN
SRI.SHEJI P.ABRAHAM
R2 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.2886 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.39/1997 on the files of the Additional Sessions Judge (Adhoc-I), Thalassery. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T.C.No.225/1994 on the files of the Judicial First Class Magistrate (Munsiff), Thaliparamba. According to the impugned judgment, the Revision Petitioner is sentenced to pay a fine of ₹25,000/- and in default, to undergo simple imprisonment for six months. If the fine amount is realised,

₹20,000/- shall be paid to the 1st respondent/ complainant as compensation under Section 357(3) Cr.P.C.

2. 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 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.

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 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.

5. It is also contended 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.

6. 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.

7. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above, I am inclined to grant 'two' months time to pay the fine. Consequently, this Revision Petition will stand disposed of subject to the following terms.

i. The Revision Petitioner shall pay a fine of Rs.25,000/- (Rupees Twenty Five thousand only) within two months from today and the same shall be given to the 1st respondent/complainant as compensation under Section 357 (1)(b) of the Code of Criminal Procedure.

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

The Criminal Revision Petition is disposed of accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.Ato Judge