

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

Crl.Rev.Pet.No. 2964 of 2003 ()

CRL.A 426/2000 of ADDL. SESSIONS COURT, KOZHIKODE DIVISION

CC 16/2000 of J.M.F.C.-II, THAMARASSERY

REVISION PETITIONER/APPELLANT/ACCUSED :

SUNILKUMAR, PROPRIETOR, FAX RELEASE,
S.K.TEMPLE ROAD, 17/263, CALICUT.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE :

1. L. NAGESH, PROPRIETOR, M/S.PAI COMMUNICATIONS,
EROTH CENTRE, BANK ROAD, CALICUT.
2. STATE OF KERALA, REP.PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.M.P.MOHAMMED ASLAM
R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 27-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No.2964 of 2003

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Dated this the 27th day of July, 2015

ORDER

The revision petitioner is the accused in C.C.No. 16/2000 on the files of the Judicial First Class Magistrate's Court-II, Thamarassery as well as the appellant in Crl.Appeal No. 426/2000 on the files of the 1st Additional Sessions Judge, Kozhikode Division. He was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act on a complaint filed by the 1st respondent herein. After trial, the learned Magistrate found the revision petitioner guilty of the said offence and convicted thereunder. He was sentenced to undergo simple imprisonment for six months and to pay ₹3,000/- as fine. In default, to undergo simple imprisonment for two months. In addition, the accused shall pay ₹48,000/- to the complainant as compensation under Section 357(3) of the Cr.P.C.

Though he had preferred the above Crl. Appeal, the appellate court also confirmed the conviction but modified the sentence. As per the modified sentence, he was sentenced to undergo simple imprisonment for six months and to pay an amount of ₹48,000/- to the complainant as compensation under Section 357(3) of the Cr.P.C. The legality and propriety of the concurrent findings of conviction and modified sentence are under challenge in this revision petition.

2. Heard the learned counsel for the petitioner and the learned counsel for the 1st respondent. Though this revision petition has been filed on various grounds, challenging the concurrent findings of conviction and sentence, the learned counsel for the petitioner submits that the challenge under this revision petition is confined to sentence only. After passing of the impugned judgment under challenge, the revision petitioner had paid the entire amount directed to be paid as compensation to the 1st respondent and now no amount is due from him to the 1st respondent. The learned

counsel for the 1st respondent submits that the 1st respondent has received the entire amount directed to be paid as compensation and now he has no subsisting grievance at all and he does not intend to proceed against the petitioner. In view of the payment of compensation, the learned counsel for the petitioner urged for modifying the substantive sentence of imprisonment also.

3. 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.

4. In view of the nature and gravity of the offence under Section 138 of the Negotiable Instruments Act and the above referred decisions, I find that the substantive sentence of imprisonment imposed on the revision petitioner can be modified as prayed for by the learned counsel for the petitioner.

5. Consequently, in supersession of the sentence imposed by the trial court and modified by the appellate court, the revision petitioner will stand sentenced to undergo simple imprisonment for one day till rising of the Court only. He shall appear before the trial court to suffer substantive sentence as stated above within a period of 'three' month from today. It is made clear that the default sentence will not come into operation.

The revision petition is disposed of.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge