

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. 3126 of 2003 ()

CRL.A 365/2001 of SESSIONS COURT, KOTTAYAM DATED 19-03-2003

CC 793/1998 of J.M.F.C-I, KOTTAYAM DATED 07-07-2001

REVISION PETITIONER(S)/APPELLANTS/ACCUSED :

1. N.R.SATHEESH, PARTNER, RAGHAVAN & COMPANY,
RESIDING AT NEENDAKARA HOUSE, NEELAMPEROOR.P.O.,
KOTTAYAM DISTRICT.
2. N.R.SALU, PARTNER, RAGHAVAN & COMPANY,
NEENDAKARA HOUSE, KOTTAYAM DISTRICT.
3. N.R.SABU, PARTNER, RAGHAVAN & COMPANY,
RESIDING AT NEENDAKARA HOUSE, NEELAMPEROOR.P.O.,
KOTTAYAM DISTRICT.
4. SARASAMMA.V.S., PARTNER, RAGHAVAN & COMPANY,
RESIDING AT NEENDAKARA HOUSE, NEELAMPEROOR.P.O.,
KOTTAYAM DISTRICT.

BY ADV. SRI.K.M.VARGHESE

RESPONDENT(S)/RESPONDENTS/COMPLAINANTS:

1. STATE OF KERALA REP. BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.
2. M.R.RAVEENDRAN, MADHURAMATTATHIL HOUSE,
SOUTH PAMPADY KARA, PAMPADY VILLAGE, KOTTAYAM DT.

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.3126 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 Petitioners for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act') in Criminal Appeal No.365/2001 on the files of the Sessions Judge, Kottayam Division. The above appeal was filed challenging the judgment finding that the Revision Petitioners are guilty of the said offence, passed in C.C.No.793/1998 on the files of the Judicial First Class Magistrate's Court-I, Kottayam. According to the impugned judgment, Revision Petitioners 1 to 3 are sentenced to undergo simple imprisonment for one month and to pay a compensation of ₹25,000/- each to the complainant under Section 357(3) of the Cr.P.C. In default,

to undergo simple imprisonment for a further period of one month. The 4th revision petitioner is sentenced to pay a fine of ₹5,000/-. In default, to undergo simple imprisonment for one month and if the amount is realised, the same shall be paid to the complainant as compensation.

2. The learned counsel for the Revision Petitioners 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 Petitioners 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/2nd respondent had successfully discharged initial burden of proving execution and issuance of the

cheque; whereas the Revision Petitioners 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.

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. At last, the learned counsel for the Revision Petitioners submits that the sentence imposed on the Revision Petitioners are 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.

6. Similarly, the substantive sentence imposed on the revision petitioners is too harsh and excessive. The learned counsel for the revision petitioners prayed for setting aside the sentence of imprisonment also. If the revision petitioners are incarcerated for a period as ordered by the courts below, the entire family will 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 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.

8. 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, substantive sentence of imprisonment imposed on revision petitioners 1 to 3 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 modified by the Appellate Court, the revision petitioners will stand sentenced as follows:

i. Revision Petitioners 1 to 3 shall undergo simple imprisonment for one day till rising of the court.

ii. Revision Petitioners 1 to 3 shall pay a compensation of Rs.25,000/- (Rupees Twenty Five Thousand only) each to the 2nd respondent/ complainant within a period of three months from today.

iii. Revision Petitioners 1 to 3 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, Revision Petitioners 1 to 3 shall undergo simple imprisonment for a period of one month each.

The Criminal Revision Petition is disposed of accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge