

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

Crl.Rev.Pet.No. 1223 of 2004 ( )

-----

CRL.A 63/2003 of SESSIONS COURT, MANJERI DATED 28-11-2003

ST 597/2000 of J.M.F.C.-I, PERINTHALMANNA DATED 25-01-2003

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

-----

RAMAKRISHNAN VAIDYAR, AGED 58 YEARS,  
SUHADA MEMMORIAL BUILDING, PUTHANANGADI P.O.  
ANGADIPURAM (VIA.), PERINTHALMANNA TALUK  
MALAPPURAM DISTRICT.

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

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE::

-----

1. MANIKANDAN, AGED 33 YEARS,  
S/O. RAMAN, KARUMARATH HOUSE, CHERUKARA P.O.  
CHERUKARA AMSOM, KIZMANNATHIL DESOM  
PERINTHALMANNA TALUK, MALAPPURAM DISTRICT.

2. THE STATE OF KERALA, REPRESENTED BY  
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA  
ERNAKULAM.

R1 BY ADV. SRI.U.K.DEVIDAS  
R2 BY PUBLIC PROSECUTOR SRI.JIBU.P.THOMAS.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY  
HEARD ON 18-06-2015, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

STU

**K.HARILAL, J.**

=====

**Crl.R.P.No. 1223 of 2004**

=====

Dated this the 18<sup>th</sup> 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.63/2003 on the files of the Sessions Judge, Manjeri. 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.597/2000 on the files of the Judicial First Class Magistrate's Court-I, Perinthalmanna. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for one month and to pay compensation of ₹5,000/- to the complainant.

2. The case of the complainant is that the accused borrowed ₹50,000/- from the complainant and in discharge of the said liability, issued Ext.P1 cheque for an amount of ₹50,000/- in favour of the complainant. But, the case of the accused is that he never borrowed any amount from PW1. It is contended that PW1 is the driver of a jeep owned by one Krishnan, from whom he borrowed ₹10,000/- in February, 1998 and he issued a signed blank cheque with a signed stamp paper as security for the said amount. Thereafter, he pledged his ornaments and repaid the loan amount. But, the cheque was not returned by the said Krishnan and that cheque is misused for prosecuting him in the instant case. To prove the said contention, the accused produced Ext.D1 series card issued by Cherukara Service Co-operative Bank to the accused before auctioning gold ornaments pledged by him. But, Ext.D1 series never shows that the accused borrowed ₹35,000/- from the bank on 15.1.1999 to repay the amount borrowed from said Krishnan. Thus, Ext.D1 series is not sufficient to arrive at a

conclusion that he borrowed ₹10,000/- from Krishnan and he repaid the same. Except the oral evidence of DW1, there is nothing to substantiate the defence contentions raised by the accused.

3. The Revision Petitioner reiterated the contentions which were raised before the courts below and got rejected concurrently. The petitioner 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.

4. The courts below had concurrently found that the complainant/1<sup>st</sup> 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 1<sup>st</sup> respondent. So also, it

is found that the debt due to the 1<sup>st</sup> respondent was a legally enforceable debt and Ext.P1 cheque was duly executed and issued in discharge of the said debt.

5. 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.

6. 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. Similarly, the substantive sentence imposed on the revision petitioner is too harsh and excessive. If the revision petitioner is 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 two months time to pay the compensation. Similarly, the substantive sentence of imprisonment for one month is reduced and modified to simple imprisonment for one day till rising of the court. Consequently, 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.5,000/- (Rupees Five thousand only) to the 1<sup>st</sup> respondent within a period of two months from today.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above with sufficient proof to show payment of compensation .

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

The Criminal Revision Petition is disposed of accordingly.

**K.HARILAL, JUDGE.**

**stu**

//True copy//

P.Ato Judge