

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

Crl.Rev.Pet.No. 85 of 2007 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO.288/2004 of
ADDITIONAL SESSIONS COURT-I, MAVELIKKARA.

AGAINST THE JUDGMENT IN CC 414/2001 of J.M.F.C.-I,
HARIPAD.

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

M.S.SAJITH KUMAR,
S/O. SIVASANKARA PILLAI, PROPRIETOR,
HARDI TRADERS,
INDUSTRIAL ESTATE, UMayANALLOOR P.O.KOLLAM.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

1. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. M/S. R.V. COLTREADS PVT LTD,
INDUSTRIAL ESTATE,
KOLLAKADAVU, KALLIMEL P.O. REP. BY ITS DIRECTOR
DR.LATHIKA, RAVIPURAM, MUTHUKULAM SOUTH P.O.,
THROUGH THE POWER OF ATTORNEY HOLDER
VIDHYADHARA BABU,
MANAGER, RESIDING AT PATTANTHUSSEERIL HOUSE,
ANAYADIKKAVU, PALLARIMANGALAM, MAVELIKARA.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 21-01-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No. 85 of 2007

Dated this the 21st day of January, 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.288 of 2004 on the files of the Additional Sessions Judge-I, Mavalikara. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.414 of 2001 on the files of the Judicial First Class Magistrate's Court-I, Haripad. According to the impugned judgment, the Revision

Petitioner is sentenced to undergo simple imprisonment for one year and to pay a compensation of ₹50,000/- to the complainant under Sec.357(3) of the Cr.P.C. and in default, to undergo simple imprisonment for a period of 60 days more.

2. 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. 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.P2(a) cheque was duly executed and issued in discharge of the said debt. 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.

3. At last, the counsel for the Revision Petitioner submits that the sentence imposed on the Revision Petitioner is disproportionate with the gravity and nature of the offence. He further submits that the Revision Petitioner is willing to pay the compensation as ordered by the court below; but he is unable to

raise the said amount forthwith due to paucity of funds. But he is ready to pay the compensation within five months.

4. 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.

5. Having regard to the nature and gravity of the

offence, in the light of the decisions quoted above and submission made at the Bar, expressing willingness to pay the compensation within five months, I am inclined to grant five months time to pay the compensation. Consequently, this Revision Petition is liable to be disposed of subject to the following terms.

i. The Revision Petitioner shall undergo simple imprisonment for one day till rising of the court.

ii. The Revision Petitioner shall pay ₹50,000/- (Rupees fifty thousand only) to the complainant/2nd respondent as compensation within a period of five months from today.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 22/6/2015 with sufficient proof to show payment of compensation.

iv. In default, the Revision Petitioner shall undergo simple imprisonment for a

period of 60 days.

The Criminal Revision Petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge