

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

Cr1.Rev.Pet.No. 906 of 2006

CRL.A 237/2004 of ADDL. SESSIONS JUDGE (ADHOC-III), KASARAGODE

C.C 129/2000 of C.J.M., KASARAGOD

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

DAYANANDA,
DHARMADHARSHI, SRI. ADHI MAYO TEMPLE, JAPPINAMOGARU
THANDOLIGO, MANGALORE.

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENT(S)/RESPONDENT/COMPLAINANT & STATE:

1. K. ABDULLA, S/O. LATE ABDUL KHADER HAJI,
KUNJATHUR SORASTABA BENGALA, P.O. KUNJATHUR
MANJESHWAR, KASARAGOD.

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

R1 BY ADVS. SRI.P.SREEKUMAR
SRI.K.S.MANU (PUNUKKONNOOR)

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 30-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

STU

K.HARILAL, J.

=====

Crl.R.P.No. 906 of 2006

=====

Dated this the 30th 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.237/2004 on the files of the Additional Sessions Judge, (Adhoc) III, Kasaragod. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.129/2000 on the files of the Chief Judicial Magistrate's Court, Kasaragod. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for six months and to pay a compensation of ₹30,000/- to the complainant and in default, to undergo simple imprisonment for two months.

2. The case of the complainant is that the accused Nos.1 and 2 had borrowed an amount of ₹30,000/- from him and in discharge of the said liability, the accused issued Ext. P1 cheque dated 6.1.2000 for an amount of ₹30,000/- to the complainant towards the repayment of the loan amount obtained by them. When the cheque was presented for encashment, the same was dishonoured and returned for want of sufficient funds.

3. But the case of the accused is that he had purchased wooden articles from the shop of the complainant for ₹5,000/- and for that transaction, he had issued a blank signed cheque to the complainant . As rightly held by the court below, the accused himself admitted that he had issued Ext.P1 cheque for the discharge of the debt due to the complainant . So, what remains to be considered is, what is the quantum of amount due from the accused to the complainant ? Absolutely, there is no evidence on record to show that ₹5,000/- only was due from the accused to the complainant.

4. Per contra, Ext.P1 cheque shows ₹30,000/- as contended by the complainant. There is no reason to disbelieve the case of the complainant that the cheque was issued for an amount of ₹30,000/- by the accused. The learned counsel for the revision petitioner further contended that the 2nd accused was acquitted on a finding that he was not a signatory to the cheque. The Manager of the bank deposed that the 2nd accused was not authorized to operate the account. But, the Manger unequivocally deposed that the 1st accused/revision petitioner is one of the two persons who had been authorized to operate the account independently. I do not find any legal infirmity or perversity in the said finding and the court below is justified in rejecting the defence raised by the accused.

5. 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 or illegality or impropriety in the findings whereby the trial court convicted him.

6. 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.

7. 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.

8. At last, the learned counsel for the Revision Petitioner submits 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. 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, if the revision petition is found meritless.

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

10. 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.

11. 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 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 confirmed by the appellate court, 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.30,000/- (Rupees Thirty thousand only) to the complainant/ 1st respondent, under Section 357(3) of the Cr.P.C, 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 on or before 1st September, 2015 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.

Sd/-
K.HARILAL, JUDGE.

stu

//True copy//

P.A to Judge