

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. 3236 of 2003

**AGAINST THE JUDGMENT IN Crl.A.No.4/2002 OF THE SESSIONS COURT, MANJERI
DATED 05-08-2003**

**ST No.1778/1996 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I,
PERINTHALMANNA DATED 29-11-2001**

REVISION PETITIONER/APPELLANT/ACCUSED :-

**KUNHIMOIDEEN, S/O.MUHAMMED,
THURUPPADAN HOUSE,
KUMARAMPUTHUR AMSOM DESOM,
PALLIKKUNNU, MANNARKAD TALUK.**

**BY ADVS.SRI.BABU S. NAIR
SMT.SMITHA BABU**

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE :-

- 1. ASSAINAR, S/O.KUNHIKADAR,
PULIKKADAN HOUSE,
THAZHEKKODE AMSOM DESOM,
PERINTHALMANNA TALUK.**
- 2. THE STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, COCHIN - 31.**

R1 BY ADVS. SMT.K.V.RESHMI

SRI.C.M.KAMMAPPU

R2 BY SRI.JUSTINE JACOB, PUBLIC PROSECUTOR

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 10-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

K.HARILAL, J

Crl.R.P.No.3236 of 2003

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 Petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act') in Criminal Appeal No.4/2012 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.No.1778/1996 on the files of the Judicial First Class Magistrate's Court-1, Perinthalmanna. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for one month.

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

3. 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.

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 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.

6. 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.

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 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 Petitioner will stand sentenced as follows;

- i) The revision petitioner shall undergo simple

imprisonment for one day till rising of the court.

ii) He shall deposit ₹30,000/- in the Trial Court within a period of two months from today and the same shall be given to the legal heirs of the deceased complainant. If the revision petitioner had deposited any amount, such deposit shall be given credit to and the balance alone needs to be paid as compensation. In that event, the legal heirs of the deceased complainant are allowed to realise such deposit also, if the complainant is no more.

iii) He shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment for one day till rising of the court as ordered above on or before 10th August, 2015 with sufficient proof to show payment of compensation.

iv) In default, he shall undergo simple imprisonment for a period of one month.

The Criminal Revision Petition is disposed of accordingly.

Sd/-
K.HARILAL
JUDGE

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P.A. TO JUDGE