

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

Crl.Rev.Pet.No. 113 of 2007 (D)

**AGAINST THE JUDGMENT IN CRA 289/2005 of ADDL.DISTRICT & SESSIONS COURT
(ADHOC)-II, PATHANAMTHITTA DATED 23-11-2006**

**AGAINST THE JUDGMENT IN CC 189/2004 of JUDICIAL FIRST CLASS MAGISTRATE
COURT-1, PATHANAMTHITTA DATED 30.08.2005**

REVISION PETITIONER(S)/APPELANT/ACCUSED :

**G.BALAGOPALAN, ANIL NIVAS,
EZHUMATTOR, MALLAPPALLY, PATHANAMTHITTA.**

BY ADV. SRI.P.HARIDAS

RESPONDENT(S)/RESPONDENTS/COMPLAINANT :

- 1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. MULAMOOTTIL FINANCE & CURIES,
KOZHENCHERRY, REP. BY JACOB THOMAS, MULMOOTTIL HOUSE
KOZHENCHERRY.**

**R1 BY SRI.JIBU P. THOMAS, PUBLIC PROSECUTOR
R2 BY ADV. SRI.V.PHILIP MATHEW**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 27-05-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

AMV

K.HARILAL, J.

.....
Crl.R.P.No. 113 of 2007 ()

.....
Dated this the 27th day of May, 2015

ORDER

The revision petitioner is the accused in C.C.No.189 of 2004 on the files of the Judicial First Class Magistrate Court-I, Pathanamthitta as well as the appellant in Crl.Appeal No.289 of 2005 on the files of the Additional District & Sessions Court, Fast Track Court (Adhoc) – II, Pathanamthitta.

2.This revision petition is filed by the accused challenging the concurrent findings of conviction and sentence imposed on the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

3.The learned counsel for the petitioner fairly submits that challenge under this revision petition is confined to sentence only. According to him the sentence imposed

on the revision petitioner is excessive and disproportionate with the nature and gravity of the offence. It is also submitted that the revision petitioner had paid entire compensation as directed by the court below. The respondent entered appearance through counsel and the learned counsel submits that the respondent/complainant had received entire amount directed to be paid as compensation from the petitioner/accused as submitted by the learned counsel for the petitioner.

4. In view of the submissions, the short question to be considered is to whether the sentence imposed on the revision petitioner is proportionate with nature and gravity of the offence under Section 138 of NI Act.

5. 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 v. 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.

6. In view of the above decisions, I am of the opinion that the sentence imposed on the revision petitioner is disproportionate with nature and gravity of offence under Section 138 of NI Act, particularly when he had paid compensation as ordered by the Appellate Court.

Consequently, the sentence imposed on the revision petitioner will stand reduced and modified to simple

:4:

imprisonment for one day till rising of the court. Only, in supersession of the sentence imposed by the Appellate Court.

The Criminal revision petition is disposed of accordingly.

Sd/-
K.HARILAL,
JUDGE.

AMV/28/05/

/TRUE COPY/

P.A.TO JUDGE