

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

Crl.Rev.Pet.No. 465 of 2005 (C)

(CRL.A 445/1998 of II ADDL. SESSIONS COURT, THIRUVANANTHAPURAM)
CC 499/1996 of J.M.F.C.-II, NEYYATTINKARA)

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

VIJAYAKUMAR, S/O. PONNAYYAN NADAR,
AYIKUTTY PUTHEN VEEDU, AYINKAMAM DESOM,
PARASSALA VILLAGE.

BY ADV. SRI.PIRAPPANCODE V.S.SUDHEER

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

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
OFFICE OF THE ADVOCATE GENERAL, HIGH COURT BUILDING,
ERNAKULAM.

2. THOMSON, S/O. LASSAR,
T.S.BHAVAN, PAZHAVILAKOM, PARASUVAIKKAL VILLAGE.

R1 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

R2 BY ADV. SRI.R.T.PRADEEP

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 25-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Cr1.R.P. No.465 of 2015

Dated this the 25th day of June, 2015.

O R D E R

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.445/1998 on the files of the court of the II Additional Sessions Judge, Thiruvananthapuram. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in C.C.No.499/1996 on the files of the Judicial First Class Magistrate's Court-II, Neyyattinkara. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for one day till rising of the court and to pay to the complainant Rs.65,000/- as compensation under Section 357(3) of

the Cr.P.C. and in default to undergo simple imprisonment for three months.

2. The main thrust of the argument advanced by the learned counsel for the revision petitioner is that Ext.P1 series of cheques were issued as security in connection with a motor vehicle business between the accused and the complainant. But no evidence had been adduced to substantiate the above said contention. As rightly held by the court below ,even if the said contention is admitted and accepted, the same would fall under the mischief of Section 138 of the N.I. Act, in view of the decision laid down by the Apex Court in **ICDS Ltd. v. Beena Shabeer [2002 (3) KLT 218 (SC)]**. The court below has rightly relied on the above decision to reject the contention raised by the revision petitioner.

3. 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.

4. Having regard to the nature and gravity of the offence and in the light of the decisions quoted above, the revision petitioner is given three months time to pay the compensation. 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. He shall pay a compensation of Rs.65,000/- (Rupees Sixty five thousand only) within a period of three months from today to the 2nd respondent/complainant, under Section 357 (3) of the Cr.P.C.
- iii. He shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before

25/9/2015 with sufficient proof to show payment of compensation.

iv. In default, he shall undergo simple imprisonment for a period of three months.

The Criminal revision petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.