

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. 3330 of 2003

**AGAINST THE JUDGMENT IN Crl.A. 48/2002 OF 3RD ADDITIONAL SESSIONS COURT
(ADHOC), FAST TRACK COURT NO.1,THRISSUR DATED 21-10-2003**

**AGAINST THE JUDGMENT IN ST 1438/2000 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT, WADAKKANCHERY DATED 07-01-2002**

PETITIONER/APPELLANT/ACCUSED :-

**C.A.BALAN, S/O.APPU,
CHALLAKAL HOUSE,
MULANKUNNATHUKAVU,
THRISSUR.**

BY ADV. SRI.K.N.PADMAKUMAR

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE :-

- 1. C.K.JAYAN, S/O.KITTUNNI,
CHANKKANDATHIL HOUSE,
VELAPPAYA, THRISSUR.**
- 2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.**

R2 BY P.P., SRI.JUSTINE JACOB

**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.3330 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.48/2002 on the files of the III Additional Sessions Judge (Ad-hoc), Thrissur. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T.No.1438/2000 on the files of the Judicial First Class Magistrate's Court, Wadakanchery. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for 15 days and is directed to pay ₹25,000/- as compensation. In default, he shall undergo simple imprisonment for a period of one month.

2. The case of the complainant is that the accused borrowed an amount of ₹25,000/- from him and in discharge of the said liability, he had issued Ext.P1 cheque and when the said cheque was presented for encashment, the same was dishonoured and returned for want of sufficient funds.

3. Per contra, in defence, the accused/revision petitioner contended that the complainant is a partner of Sooryodaya Kuries and Loans, Mulankunnathukavu, and one Adbul Salam had joined the kuri and had auctioned the same. The accused was a surety for the said transaction and he had issued a signed blank cheque as security for the release of the chitty amount to the said Abdul Salam.

4. Going by the judgment, it is seen that though the revision petitioner had set up a defence case by mere suggestion, no evidence had been adduced to substantiate the said contention, at least with the yardstick of preponderance of probabilities.

5. The legal position settled by the Apex Court in ***Mulammoottil Consumer Credit Ltd. v. Sreenivasan*** [2006

(4) KLT 543) is that mere suggestion in cross examination is not sufficient to rebut the presumption under Sections 139 and 118 (a) of the N.I.Act. The said proposition is affirmed by the Apex Court in ***Kumar Export v. Sharma Carpets*** (2009 (1) KLT 197 SC). In view of the above decisions, I find that there is no illegality or impropriety in the finding that the accused miserably failed to rebut the presumption under Section 138 of the N.I.Act. Even if the cheque was issued as a security, it would fall under the mischief of the offence under Section 138 of the N.I.Act, in view of the decision in **2002(3) KLT 218 [ICDS Limited v. Beena Shabeer]**.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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 three months time to pay the compensation. Similarly, the substantive sentence of imprisonment is reduced and modified to simple imprisonment for a one day till rising of the court. Consequently, this Revision Petitioner will stand sentenced as given below;

i) The revision petitioner shall undergo simple imprisonment for one day till rising of the court.

ii) He shall pay a compensation of ₹25,000/- (Rupees twenty five thousand only) to the complainant under Section 357(3) of the Cr.P.C. within a period of three months from today. If the revision petitioner had deposited any amount in the trial court in compliance with the interim order of this Court or the appellate court, the same shall be given credit to and the balance alone needs to be paid as compensation. In that event, the complainant is allowed to realise such deposit, if

any, from the trial court.

iii) He shall appear before the Trial Court to suffer the substantive sentence referred above on or before 10th September, 2015 with sufficient proof to show payment of compensation.

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

The Criminal Revision Petition is disposed of accordingly.

Sd/-
K.HARILAL
JUDGE

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P.A. TO JUDGE