

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. 519 of 2005 ()

AGAINST THE JUDGMENT IN CRL.A 529/2003 of III ADDITIONAL
SESSIONS COURT (AD HOC), FAST TRACK-I, THRISSUR DATED
05-02-2005

AGAINST THE JUDGMENT IN ST 890/1999 of J.M.F.C., KODUNGALLUR
DATED 29-07-2003

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

ABDUL JABBAR, ANTHARVILAPUTHENVEETIL,
P.O.PERUMPUZHA, KERALAPURAM, KOLLAM.

BY ADVS.SRI.T.H.ABDUL AZEEZ
SRI.T.B.HOOD

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

1. K.K. ABDUL LATHEEF, PROPRIETOR,
SAI PRODUCTS, NATTIKA, VALAPPAD.
2. STATE OF KERALA, REP.BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

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.519 of 2005

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.529/2003 on the files of the court of the III Additional Sessions Judge (Ad hoc), Fast Track-I, 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.890/1999 on the files of the Judicial First Class Magistrate's Court, Kodungallur. 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 Rs.50,000/- as compensation to the complainant and in default to

undergo simple imprisonment for three months.

2. The complainant's case is that in discharge of a legally enforceable debt, the accused had issued a cheque dated 10.7.1998 for Rs.42,000/- to him. The accused contended that he had issued a signed blank cheque in favour of one Noushad in a kuri transaction and the said Noushad is a relative of the complainant. So the complainant had obtained the cheque from Noushad and misused that cheque by filing the present complaint against the revision petitioner. After considering the evidence on record, the court below concurrently found that there is no document or any kind of evidence to show that he had kuri transaction with the said Noushad, which allegedly caused issuance of blank signed cheque to Noushad. In the absence of such evidence, it can be held that the defence contention raised by the revision petitioner is a mere denial only. Secondly, the revision petitioner contended that Ext.P3 notice was sent beyond the period of 15 days from 22/7/1998 and there was no valid notice given by the complainant. It is true that the

complainant had not produced the intimation received from the bank regarding the dishonour of the cheque. But the complainant, in his complaint, specifically averred that it was on 29/7/1998 that he got the information regarding dishonour of the cheque. In the lawyer notice also it was so specifically stated that the cheque was returned to him on 29/7/1998. While the complainant was in box, he reiterated the said contention. But no cross examination had been conducted to dispute the said claim of the complainant that he received returned cheque on 29/7/1998. As rightly held by the court below, in the absence of any challenge in evidence, the court below has rightly rejected the said contention.

3. At last, the learned counsel for the revision petitioner sought for some time to pay the compensation, if this Court finds that the revision petition is liable to be dismissed.

4. 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.

5. The revision petitioner is given three months time to pay the compensation. 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.50,000/- (Rupees Fifty thousand only) to the 1st respondent/complainant, within a period of three months from today.

- iii. The revision petitioner shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 26/9/2015 with sufficient proof to show payment of compensation.
- iv. In default, the revision petitioner shall undergo simple imprisonment for a period of two months.
- v. If the revision petitioner had deposited any amount in compliance with the order dated 3/3/2005, the said amount shall be given credit to and the balance alone needs to be paid as compensation. In that event, the complainant is allowed to realise the said deposit, if any, from the court below.

K. HARILAL, JUDGE

okb.