

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

Crl.Rev.Pet.No. 1203 of 2006 ()

CRL.A 423/2002 of II ADDL.SESIONS
JUDGE, THIRUVANANTHAPURAM.

CC 294/1998 of JUDICIAL FIRST CLASS MAGISTRATE COURT-III,
NEYYATTINKARA

REVISION PETITIONER/APPELLANT/ACCUSED:

ARULAPPAN,
KRISHNA BUILDING, KARAKKATTUVILA VEEDU, KILIYOOR
VELLARADA P.O.

BY ADV. SRI.D.AJITHKUMAR

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE::

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1. SREEKANTAN NAIR,
VEENA BHAVAN, KANJIRAMKONAM, KILIYOOR
VELLARADA P.O.
 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADVS. SRI.M.BALAGOVINDAN
SRI.M.R.SASITH
R2 BY PUBLIC PROSECUTOR:JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 14-07-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

skr

K.HARILAL, J.

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Crl.R.P.No.1203 of 2006

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Dated this the 14th day of July, 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.423/2002 on the files 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.294/98 on the files of the Judicial First Class Magistrate's Court-III, Neyyattinkara. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for one day till rising of the court and also to pay a sum of ₹15,000/- to the complainant

as compensation. In default, to undergo simple imprisonment for 45 days.

2. The complainant's case is that the accused owed an amount of ₹15,000/- to the complainant and in discharge of the said liability, the accused issued a cheque dated 05.03.1998 for an amount of ₹15,000/- to the complainant. Though he presented the cheque for encashment, the same was dishonoured and returned for want of sufficient funds. To discharge the initial burden of proving execution and issuance of the cheque, PWs.1 to 3 were examined and Exts.P1 to P7 were marked. After appreciating the evidence adduced by the complainant, the court below arrived at a finding that the complainant has successfully discharged the initial burden of proving execution and issuance of the cheque and thereby the presumptions under the N.I.Act, which stood in favour of the complainant. I do not find any perversity in the appreciation of evidence adduced by the complainant.

3. Coming to the rebuttal evidence, it is seen that one witness was examined as DW1 and Exts.D1 and D2 were marked for the accused. According to the accused, there was no legally enforceable debt under the said cheque as the said cheque was originally given as a security for a chitti conducted by one Narayanan Nair. Even though the accused got a case that there was no transaction between the accused and the complainant, there was nothing to brought out to disbelieve the case of the complainant, the courts below concurrently observed so. Though DW1 was examined and Exts.D1 and D2 were marked, the courts below observed that those evidences would not render any help to substantiate the case of the complainant. I do not find any kind of illegality or impropriety in the above findings. Thus, the accused miserably failed to rebut the presumptions under the N.I.Act.

4. 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.

5. 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.

6. 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.

7. 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 sometime to pay the compensation as he is unable to raise the said amount forthwith due to paucity of funds.

8. 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.

9. 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. Consequently, this Revision Petition will stand disposed of subject to the following terms.

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.15,000/- (Rupees Fifteen 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 substantive sentence of simple imprisonment as ordered above on or before 15th October, 2015 with sufficient proof to show payment of compensation.

iv. In default, the Revision Petitioner 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