

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

Crl.Rev.Pet.No. 1022 of 2005 ()

Crl.A 781/2003 of III ADDITIONAL SESSIONS COURT (ADHOC), FAST
TRACK COURT NO.III, THRISSUR DATED 24-11-2004

CC 1083/2001 of J.M.F.C.-II, THRISSUR DATED 20-11-2003

REVISION PETITIONER(S)/APPELLANT/ACCUSED.:

T.J.PIOUS, 44 YEARS, S/O.THATTIL JOSEPH,
P.O.ANTHIKKAD, THRISSUR DISTRICT.

BY ADV. SRI.M.D.SASIKUMARAN

RESPONDENTS/RESPONDENTS /COMPLAINANT.:

1. RAGHU, S/O.VELAPPAN, ERANEZHATH HOUSE,
P.O.KANJANY, THRISSUR.

2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

R1 BY ADV. SRI.K.N.PADMAKUMAR

R2 BY PUBLIC PROSECUTOR SMT.MADHU BEN.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 19-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No.1022 of 2005

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Dated this the 19th 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.781/2003 on the files of the III Additional Sessions Judge (Adhoc) Fast Track Court No.III, Thrissur. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.1083/2001 on the files of the Judicial First Class Magistrate's Court-II, Thrissur. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for one day till rising of the court and to pay ₹35,000/- as compensation to the 1st respondent and

in default, to undergo simple imprisonment for one month.

2. The complainant's case is that the accused had borrowed an amount of ₹35,000/- from him and in discharge of the said liability, he had issued Ext.P1 cheque for an amount of ₹35,000/- in favour of the complainant and when the cheque was presented for encashment, the same was dishonoured for want of sufficient funds. The accused had raised three contentions in defence. According to him, Ext.P3 is not a copy of the original notice issued by the complainant to him. The date of notice is not specifically mentioned in the original notice and the same was an invalid one. The court below, after examining Ext.P4 Postal acknowledgment and Ext.P5 Post receipt, found that there is sufficient evidence to prove that Exts.P4 and P5 are in respect of the issuance of the original of Ext.P3 lawyer notice. On a perusal of Ext.P5, it could be seen that notice was sent by registered post on 25.8.2001 and the number of the article is 2310. The same number is mentioned in

Ext.P4 postal acknowledgment card also. Ext.P4 contains the number 2310. So, there is no difficulty to find out that Exts.P4 and P5 are in respect of Ext.P3 lawyer notice. I do not find any kind of perversity in the appreciation of the above contentions raised by the petitioner in defence and no interference is called for. Secondly, it is contended that Ext.P1 cheque was issued to Indian Financiers and the same was misused by the complainant to prosecute him with an intention to harass him. After considering the evidence on record, the court below found that there is absolutely no evidence to prove that PW1 had misused the cheque alleged to have been issued by the accused to Indian Financiers. I do not find any kind of illegality or impropriety in the said finding.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.35,000/- (Rupees Thirty Five 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 20th September, 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