

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

Crl.Rev.Pet.No. 1510 of 2002

AGAINST THE JUDGMENT IN CRL.A.NO. 19/1996 of ADDITIONAL
SESSIONS COURT (ADHOC), KALPETTA.

AGAINST THE JUDGMENT IN STC.NO. 1587/1993 of J.M.F.C,
MANANTHAVADY.

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

SRI. M.USMAN, MURIKKANCHERY HOUSE,
PANAMARAM P.O., MANANTHAVADY.

BY ADV. SRI.LALJI P.THOMAS

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

1. SRI.A.NEELAKANDAN NAMBEESAN,
APUZHA HOUSE, PANAMARAM, MANANTHAVADY.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682 031.

BY PUBLIC PROSECUTOR SRI. JUSTIN JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 11-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No. 1510 of 2002

Dated this the 11th 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.19 of 1996 on the files of the Additional Sessions Judge (Ad-hoc), Kalpetta. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T.No.1587 of 1993 on the files of the Judicial First Class Magistrate's Court, Mananthavady. According to the impugned judgment,

the Revision Petitioner is sentenced to undergo simple imprisonment for three months and he is also directed to pay a compensation of ₹18,000/- to the complainant under Sec.357(3) of the Cr.P.C.

2. 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. 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. 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.

3. The counsel for the Revision Petitioner submits that challenge under this Revision is confined to sentence only. The sentence imposed on the Revision Petitioner is disproportionate with the gravity and nature of the offence. He further submits that the Revision Petitioner is willing to pay the compensation as ordered by the court below; but he is unable to raise the said amount forthwith due to paucity of funds. But he is ready to pay the compensation within three months.

4. 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.

5. 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.

6. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and the submission made at the Bar, expressing willingness to pay the compensation within three months, I find that the sentence imposed on the revision petitioner is excessive and disproportionate with the nature and gravity of the offence. Consequently, the substantial sentence of three months will stand reduced and modified to the simple imprisonment for one day till rising of the court. In supersession of the sentence imposed by the trial court and modified by the appellate court, the revision petitioner will stand convicted as follows:

i. The Revision Petitioner shall undergo simple imprisonment for one day till rising of the court.

ii. The Revision Petitioner shall pay

Rs.18,000/- (Rupees Eighteen thousand only) to the legal heirs of the deceased complainant as compensation under Sec.357(3) of the Cr.P.C. 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 11/9/2015 with sufficient proof to show payment of compensation to the legal heirs of the deceased complainant.

iv. In default, the Revision Petitioner shall undergo simple imprisonment for a period of one month.

The Criminal Revision Petition is disposed of accordingly.

(K. HARILAL, JUDGE)

Nan/

K. HARILAL, J.

Crl.R.P. No. 1510 of 2002

Dated this the 11th day of June, 2015

ORDER