

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

Crl.Rev.Pet.No. 1711 of 2002 (A)

AGAINST THE JUDGMENT IN CRL.A 100/2000 of ADDITIONAL SESSIONS
COURT (FAST TRACK-I), PALAKKAD DATED 26-09-2002

AGAINST THE JUDGMENT IN ST 1893/1999 of J.M.F.C.,CHITTUR DATED
15-04-2000

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REVISION PETITIONER(S)/APPELLANT/ACCUSED:

KANNAN ALIAS ARUMUGHAN, S/O.VASU,
MUTTIRINGI, VALAVUPALAM, NALLEPPILLY,
CHITTUR TALUK, PALAKKAD DISTRICT.

BY ADVS.SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE:

1. NATARAJAN, S/O.VELAPPAN,
NARANKUZHI, VADATHODU, CHITTUR TALUK.

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

R2 BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 04-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Crl.R.P. No.1711 of 2002

Dated this the 4th 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.100/2000 on the files of the court of the Additional Sessions Judge, (Fast Track-I), Palakkad. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in S.T.No.1893/1999 on the files of the Judicial First Class Magistrate's Court, Chittur. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for three months and to pay a fine of Rs.5,000/- and in fault to undergo simple imprisonment for one month.

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 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.

3. The courts below had concurrently found that the complainant/1st respondent had successfully discharged the 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.

4. 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 at. Therefore, I am not inclined to re-appreciate entire evidence once again and I confirm the concurrent findings of conviction.

5. 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 some time to pay the fine as he is unable to raise the said amount forthwith due to paucity of funds. The learned counsel for the revision petitioner further submits that the 1st respondent/ complainant is no more, and to substantiate the said contention he has produced copy of the death certificate also. I am of the opinion that since it is a long pending matter, this revision petition need not be retained to implead the

legal heirs of the deceased.

6. 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 be put in great hardship.

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 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.

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, expressing willingness to pay the fine, I am inclined to grant three months time to pay the fine. Similarly, the substantive sentence of imprisonment is reduced and modified to simple imprisonment for one day till rising of the court. In supersession of the sentence imposed by the trial court and confirmed by the appellate court, the revision petitioner will stand sentenced as follows:

- (1)The revision petitioner shall undergo simple imprisonment for one day till rising of the court.
- (2)He shall pay a fine of Rs.45,000/- within three months and the same shall be given to the legal heirs of the deceased complainant under Section 357(1) of the Cr.P.C. If he had deposited any amount towards fine, the same shall be given credit to and the balance alone need be paid as fine.
- (3)He shall appear before the trial court to suffer the substantive sentence of simple imprisonment as ordered above on or before 05/9/2015 with sufficient proof to show payment of fine.
- (4)In default, he shall undergo simple

imprisonment for 2 months.

This criminal revision petition is disposed of as
above.

Sd/-
K. HARILAL, JUDGE

okb.