

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

Crl.Rev.Pet.No. 2216 of 2004 (B)

AGAINST THE JUDGMENT IN CRL.A 1071/2003 of ADDITIONAL
SESSIONS COURT (ADHOC-I), ERNAKULAM DATED 07-06-2004

AGAINST THE JUDGMENT IN CC 528/1999 of ADDL.C.J.M.COURT,
(ECONOMIC OFFENCES), ERNAKULAM DATED 31-10-2003

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REVISION PETITIONER(S)/APPELLANT/ACCUSED.:

A.P.BASTIAN, S/O.VINCENT PETER,
ARATTUKULAM HOUSE, PADINJATTUKARA, PALLITHODU P.O.
CHERTHALA, ALAPPUZHA DISTRICT.

BY ADVS.SRI.M.D.SASIKUMAR
SRI.GEORGE MATHEW

RESPONDENT(S)/RESPONDENTS/COMPLAINANT/STATE.:

1. M.P.MATHEW, MANIYATTU HOUSE,
NELLIKUZHI, KOTHAMANGALAM,
(NOW RESIDING AT M.S.M.PLAZA, NEAR NORTH OVER
BRIDGE, ERNAKULAM).

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

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB
R1 BY ADV. SRI.MOHAMMED RAFIQ

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 23-06-2015, ALONG WITH CRRP.2218/2004
& CRRP. 2220/2004, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Crl.R.P. Nos.2216, 2218 & 2220 of 2004

Dated this the 23rd day of June, 2015.

COMMON ORDER

These revision petitions are 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 Nos.1071/2003, 1072/2003 & 1075/2003 on the files of the court of the Additional Sessions Judge (Adhoc-I), Ernakulam. The above appeals were filed challenging the judgments finding that the revision petitioner is guilty of the said offence, in C.C.Nos.533/1999, 528/1999 & 552/1999 on the files of the Additional Chief Judicial Magistrate's Court (Economic Offences), Ernakulam. According to the judgments of the trial court, the accused was sentenced to undergo simple imprisonment for one month and to pay a fine of Rs.15,000/- and in default to undergo simple imprisonment for fifteen days, in

each case. It was further ordered that Rs.12,000/- each, out of the fine amount of Rs.15,000/- in each case, shall be given to the complainant towards cost and compensation under Section 357(1) of the Cr.P.C. Though the accused had preferred appeals in each case, the appellate court also confirmed the conviction, but modified and reduced the substantive sentence of imprisonment alone, retaining the rest of the sentence in each case as such, without any interference. The appellant stood sentenced to undergo simple imprisonment for one day till rising of the court, in each case, in addition to the fine with default sentence.

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 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 cheques; 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.Pl series cheques (3 numbers) were 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 the 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 amount as he is unable to raise the said amount forthwith due to paucity of funds.

6. 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.

7. Having regard to the nature and gravity of the offence and in the light of the decisions quoted above, the revision petitioner is given three months time to pay the fine in each case. Consequently, each 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. He shall pay a fine of Rs.15,000/-(Rupees Fifteen thousand only) each within a period of three months from today and the same shall be given to the 1st respondent/complainant as compensation under Section 357(3) of the Cr.P.C.
- iii. He shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment in each case as ordered above on or before 23.9.2015 with sufficient proof to show payment of fine.
- iv. In default, he shall undergo simple imprisonment for a period of 15 days in each case.
- v. The substantive sentence shall run concurrently, if he pays the entire fine amount in all the cases together.

- vi. If he had deposited any amount towards fine in compliance with the interim order of this Court, that amount shall be given credit to and the balance alone need be paid as fine. In that event, the 1st respondent is allowed to realise the said amount, if already deposited.

The Criminal revision petitions are disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.