

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

Crl.Rev.Pet.No. 1231 of 2007

AGAINST THE JUDGMENT IN CRL.A.NO. 326/2006 of ADDITIONAL
SESSIONS COURT (AD HOC-I), ERNAKULAM.

AGAINST THE JUDGMENT IN CC 975/1999 of ADDITIONAL C.J.M.
(E&O), ERNAKULAM.

REVISION PETITIONER(S)/1ST RESPONDENT/COMPLAINANT:

V.O.DEVASSY, AGED 53 YEARS,
S/O.OUSEPH, VETTAKKAL HOUSE, PALARIVATTOM,
COCHIN-25.

BY ADV. SRI.M.A.ABDUL HAKHIM

RESPONDENTS/APPELLANT/ACCUSED & STATE:

1. P.S.AJITH KUMAR, S/O. SREEDHARAN,
PUTHEN VEEDU, NEAR KALATHARA SCHOOL,
INCHAKKAL ROAD,
MARADU, THRIIPPUNITHURA.

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

R1 BY ADV. SRI.P.B.ASOKAN

R2 BY PUBLIC PROSECUTOR SRI.JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 19-08-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.1231 of 2007

Dated this the 19^h day of August, 2015

ORDER

The revision petitioner is the complainant in C.C.No.975/1999 on the file of the Additional Chief Judicial Magistrate's Court (Economic Offices), Ernakulam, as well as the 1st respondent in Crl. Appeal No.326/2006 on the files of the Additional Sessions Court (Ad-hoc-I), Ernakulam. The 1st respondent was prosecuted for the offence punishable under Sec.138 of the N.I. Act and after trial, he was found guilty of the said offence and convicted thereunder. He was sentenced to undergo simple imprisonment for one year and to pay a compensation of Rs.1 lakh under Sec.357(3) of the Cr.P.C. and in default, to undergo simple imprisonment for three months. In the above

appeal filed by the 1st respondent herein, the learned Sessions Judge, after re-appreciating the entire evidence, confirmed the conviction; but reduced and modified the sentence to simple imprisonment for one day till rising of the court and to pay a compensation of Rs.50,000/- to the complainant under Sec.357(3) of the Cr.P.C. and sustained the default sentence as such. The above modification of the sentence is under challenge in this revision petition.

2. The sum and substance of the contention raised in this revision is that the lower appellate court failed to consider the specific reasons for awarding double the cheque amount and imprisonment for one year. Ext.P1 cheque was issued in the year 1997 and the accused, with an intend to protract the proceedings, falsely disputed that the signature at the correction in Ext.P1 cheque and the inordinate delay was caused by false contention which was scientifically found incorrect by the forensic expert. In that view of the matter, the trial court is justified in

directing to pay double the cheque amount as cost.

3. The short question that arises for consideration in this revision petitioner is, whether the appellate court can be justified in reducing the quantum of compensation and the prison term.

4. 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.

5. In the light of the above decisions, having

regard to the nature and gravity of the offence under Sec.138 of the N.I. Act, I find that the appellate court can be justified in reducing the prison term to simple imprisonment for one day till rising of the court.

6. The next point to be considered is, can the appellate court be justified in reducing the quantum of compensation?

7. As rightly submitted by the revision petitioner, the cheque was issued in the year 1997; but the trial was delayed solely on the reason that the accused falsely disputed the correction in Ext.P1 cheque and later it was found incorrect by the Forensic Science Laboratory Report, after 9 years. In short, the delay was caused by the accused by raising a false contention without any bona fides, with an intend to protract the proceedings. So the appellate court is not justified in reducing the quantum of compensation. Even otherwise, in view of the decision in Vijayan vs. Baby (2011(4) KLT 355), the complainant is entitled to get interest at the rate of 9% per annum. The trial

court has specifically assigned the reasons for awarding the compensation double the cheque amount. The reasons given by the trial court are justified in view of the facts involved in this case.

8. Consequently, in modification of the sentence imposed by the appellate court, the 1st respondent/accused will stand sentenced as follows and four months time is given to pay the compensation:

i. The 1st respondent/accused shall undergo simple imprisonment for one day till rising of the court.

ii. He shall pay a compensation of Rs.1 lakh (Rupees one lakh only) within a period of three months from today to the complainant/the revision petitioner as compensation under Sec.357(3) of the Cr.P.C.

iii. He shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 18/12/2015 with sufficient proof to

show payment of compensation.

iv. In default, the 1st respondent/accused shall undergo simple imprisonment for a period of three months.

v. If he had deposited any amount in the trial court towards compensation or fine, the same shall be given credit to and the balance alone needs to be paid as compensation or fine, as the case may be, and in that event, the complainant is allowed to realise such deposit from the court.

This revision petition is allowed in part.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge