

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

Crl.Rev.Pet.No. 1458 of 2007 ()

CRL.A 532/2006 of III ADDL.SESSIONS COURT, KOLLAM

CC 226/2002 of J.M.F.C., SASTHAMCOTTA

REVISION PETITIONER/APPELLANT/ACCUSED:

SATHEESH CHANDRAN, S/O. GOPALAKRISHNA
PILLAI, ADICKATTU VEEDU, VADAKKUMTHALA VILLAGE
KOLLAM.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS/RESPONDENTS/STATE & COMPLAINANT:

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

2. A.SOMARAJAN,
KOTTAKKATTU THEKKATHIL, PANAPPETTI, PORUVAZHY
SASTHAMCOTTA VILLAGE, KOLLAM.

R1 BY PUBLIC PROSECUTOR SRI.JIBU.P.THOMAS.

R2 BY ADV. SRI.VPK.PANICKER

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 29-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No.1458 of 2007

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Dated this the 29th day of July, 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.532/2006 on the files of the III Additional Sessions Judge, Kollam. The above appeal was filed challenging the judgment whereby the Revision Petitioner was found guilty of the said offence, passed in C.C.No.226/2002 on the files of the Judicial First Class Magistrate's Court, Sasthamcotta. According to the impugned judgment, the Revision Petitioner stands sentenced to undergo simple imprisonment for six months with compensation of ₹ 2,00,000/- to the complainant. In default, to undergo simple

imprisonment for a further period of 15 days.

2. The learned counsel for the revision petitioner has raised two contentions in this revision petition. Firstly, it is contended that the institution of the complaint itself was a premature one and is in contravention to the statutory period prescribed under Section 142 of the N.I.Act. It is contended that after dishonour of the cheque, demand notice was sent to the appellant on 23.10.2001 and it was accepted on 30.10.2001. The time for effecting payment expired on 14.11.2001 and one month calculated therefrom is the period within which this the complaint ought to have been filed. That means, according to the accused, the period expired by 14.12.2001 only. But, complaint was filed on 13.11.2001 ie., the complaint was filed one day before the expiry of the statutory period for effecting payment.

3. I am unable to accept the above contention and the court below has rightly considered the period of limitation. According to Sections 9 and 10 of the General Clauses Act,

when computing the period of limitation, the first day has to be excluded from the series of days. If that be so, as rightly held by the courts below, the period of limitation will expire on 13.11.2001 and the court below is justified in filing the complaint after 13.11.2001. There is no illegality or impropriety in the finding arrived at by the courts below.

4. Secondly, the learned counsel for the revision petitioner contended that the original of the cheque was not produced before the court; but, going by the judgment passed by the trial court, it could be seen that the certified copy of the original cheque was produced before the court. As far as the prosecution under Section 138 of the N.I.Act is concerned, the question is, whether the accused has committed the offence by dishonour of the cheque? The offence is complete by dishonour of the cheque for want of sufficient funds. That is not disputed in the instant case and in defence, the petitioner has no case that the disputed cheque is not a cheque issued from his account. In the

above view, I find that no prejudice has been caused to the petitioner by not producing the original cheque.

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. 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 compensation as he is unable to raise the said amount forthwith due to paucity of funds.

7. 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.

8. 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.

9. 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. Similarly, the substantive sentence of imprisonment is reduced and modified to simple imprisonment for one day till rising of the court. Consequently, in supersession of the sentence imposed by the trial court and confirmed by the appellate court, the revision petitioner will stand sentenced as follows:

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.2,00,000/- (Rupees Two lakhs only) to the 2nd respondent within a period of three months from today under Section 357(3) of the Cr.P.C. If the petitioner had deposited any amount in the trial court in compliance with the interim order of this Court or appellate court, the same shall be given credit to and the balance alone need be paid as compensation.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 30th October, 2015 with sufficient proof to show payment of compensation .

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

The Criminal Revision Petition is disposed of accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge