IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

Crl.Rev.Pet.No. 3118 of 2004 ( )

AGAINST THE JUDGMENT IN ST 448/1998 of ADDL.C.J.M., THIRUVANANTHAPURAM, DATED 10-04-2003

REVISION PETITIONER(S)/COMPLAINANT:

K.O.MATHEW, MARY BHAVAN,
MURUKUMPUZHA P.O. THIRUVANANTHAPURAM.

BY ADV. SRI.BINDU SREEKUMAR

RESPONDENT(S)/ACCUSED AND STATE:
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1. **MADHUSOODHANAN NAIR, P.T. HOUSE,**
   CHELLANKODE MURIYIL, IRINJAYAM P.O., NEDUMANGADU,
   THIRUVANANTHAPURAM.

2. **THE STATE OF KERALA, REP. BY THE**
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.B.JAYASURYA
R2 BY PUBLIC PROSECUTOR SMT. V.H. JASMINE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SS

K. RAMAKRISHNAN, J.

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Crl. R. P. No.3118 of 2004

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Dated this the 20th day of March, 2015

O R D E R

Complainant in S.T.No.448/1998 on the file of the Additional Chief Judicial Magistrate Court, Thiruvananthapuram, is the revision petitioner herein. The case was taken on file on the basis of a private complaint filed by the revision petitioner herein, against the first respondent, alleging offence under Section 138 of the Negotiable Instruments Act (hereinafter called 'the Act').

2. The case of the complainant in the complaint was that, revision petitioner borrowed a sum of ₹25,000/- in May, 1997 and in discharge of that liability, he had issued nine cheques in favour of the complainant, out of which eight cheques were issued for ₹3,000/- each and one cheque for ₹1,000/- and that was agreed to be paid in monthly installments. He had presented three cheques and encashed the amount covered by three cheques namely

₹9,000/- and the fourth cheque dated 10.02.1998, namely Ext.P1 which when presented was dishonoured for the reason 'funds insufficient', evidenced by Ext.P2 dishonour memo. Complainant issued Ext.P3 notice vide Ext.P4 postal receipt and the same was received by the revision petitioner evidenced by Ext.P5 postal acknowledgment. He had sent a reply with false allegations and he had not paid the amount. So he had committed the offence punishable under Section 138 of the Negotiable Instruments Act. Hence the complaint.

3. When the accused appeared before the court below, the particulars of offence were read over and explained to him and he pleaded not guilty. In order to prove the case of the complainant, the complainant himself was examined as PW1 and Exts.P1 to P7 were marked on his side. After closure of the complainant's evidence, the accused was questioned under Section 313 of the Code of Criminal Procedure and he denied all the incriminating

circumstances brought against him in the complainant's evidence. He had further stated that, he had borrowed the amount and issued eight cheques for ₹3,000/- each and one cheque for ₹1,000/- and three cheques were encashed and ₹7,000/- has been paid by his nephew and he had also paid ₹3,000/- in another case, which was filed as S.T.432/1998 and he is liable to pay another ₹6,000/- including this amount, for which he prayed time and no defence adduced on his side.

4. After considering the evidence on record, the court below found the first respondent guilty under Section 138 of the Negotiable Instruments Act and convicted him thereunder and sentenced him to undergo imprisonment till rising of the court and also to pay a fine of ₹3,300/-, in default to undergo simple imprisonment for ten days. It is further ordered that, if the fine amount is realised, an amount of ₹3,000/- to be paid to the complainant as compensation under Section 357(1)(b) of the Code of

Criminal Procedure. Dissatisfied with the quantum of sentence imposed, the complainant had filed this revision petition.

5. Heard the counsel for the revision petitioner, first respondent and learned Public Prosecutor.

6. The counsel for the revision petitioner submitted, having found that the accused guilty under Section 138 of the Negotiable Instruments Act, the court below ought to have fixed the fine to the tune of double the cheque amount and awarded adequate compensation out of the same. He had relied on the decision reported in **Vijayan R. v. Baby and Another (2011(4) KHC 276)** in support of his case.

7. The counsel for the first respondent submitted that, there is no illegality committed by the court below.

8. Heard the Public Prosecutor as well.

9. The only grievance of the revision petitioner

is that, the compensation awarded is not adequate. It is true that, Section 138 provides that, the court has got power to impose double the cheque amount as fine. It is true that, in the decision reported in Vijayan's case (supra), the Hon'ble Supreme Court has held that, compensation with interest can be awarded from the date of issuance of the cheque till payment. But in the subsequent decision in **Somanath Sarkar v. Utpal Basu Mallick [2013(4) KLT 350 (S.C.)]**, the Hon'ble Supreme Court has held that, there is no provision for payment of compensation in a case under Section 138 of the Negotiable Instruments Act, but court has got power to impose double the cheque amount as fine and if the fine is quantified, out of the same, compensation can be paid to the complainant under Section 357(1)(b) of the Code of Criminal Procedure.

10. Considering the amount involved, court below had fixed the fine as ₹3,300/-, which cannot be said to be low. But court below ought to have awarded the entire

fine as compensation to the complainant which has not been done in this case. So considering the circumstances, this court feels that the entire fine amount imposed by the court below can be awarded as compensation to the complainant which will meet the ends of justice. While confirming the sentence imposed by the court below, the direction to give ₹3,000/- as compensation is modified and directed to pay the entire fine amount if realised to the complainant as compensation under Section 357(1)(b) of the Code of Criminal Procedure.

With the above modification alone, the revision petition is disposed of accordingly. Office is directed to communicate this order to the concerned court, immediately.

Sd/-
K. Ramakrishnan, Judge
// True Copy//

P.A. to Judge

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