

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

Crl.Rev.Pet.No. 2279 of 2005 ()

CRL.A 500/2002 of I ADDL. SESSIONS JUDGE, THIRUVANANTHAPURAM

CC 463/2000 of J.M.F.C - V, (SPL.COURT FOR MARKLIST CASES),
THIRUVANANTHAPURAM

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

L. VASANTHA, D/O. SANTHAN,
U.D. COMPILER, D.D. OF EDUCATION, KOCHAR ROAD
KILLIPALAM, THIRUVANANTHAPURAM, RESIDING AT V.P.
BROTHERS, WEST PUNKULAM, VELLAYANI
THIRUVANANTHAPURAM.

BY ADVS.DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
SRI.M.R.JAYAPRASAD

RESPONDENT(S)/RESPONDENTS/COMPLAINANT::

1. STATE OF KERALA,
REPRESENTED BY THE DIRECTOR OF PUBLIC PROSECUTIONS
HIGH COURT OF KERALA, ERNAKULAM.

2. PRATHAPACHANDRAN NAIR,S/O.KRISHNA PILLAI
SARABINDHU, KUDAPPANAKUNNU, THIRUVANANTHAPURAM.

R2 BY ADV. SRI.M.GEORGE THOMAS
R1 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 27-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No. 2279 of 2005

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Dated this the 27th 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.500/2002 on the files of the I Additional Sessions Judge, Thiruvananthapuram. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.463/2000 on the files of the Judicial First Class Magistrate's Court-V (Special Court for Marklist cases), Thiruvananthapuram. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for one day till rising of the court and

to pay a compensation of ₹95,000/- to the complainant under Section 357(3) of the Code of Criminal Procedure. In default, to undergo simple imprisonment for one month.

2. The complainant's case is that accused borrowed an amount of ₹95,000/- from him and in discharge of the said liability, he had drawn and issued Ext.P1 cheque for the said amount.

3. The accused admitted the signature in Ext.P1 cheque. But, in defence, when the complainant was cross examined, put suggestive questions to him to the effect that the accused had no money transaction with the complainant and in connection with the transaction with one Mini, who was working with the accused, she had given a signed blank cheque leaf to her and the said cheque was converted as Ext.P1 and misused for prosecuting the accused. But, when the accused was examined under Section 313 of the Cr.P.C, she has no case as to how the cheque happened to be in the possession of the complainant. In the above context, the court below arrived at a finding that the accused has miserably failed to rebut the presumption which stood in

favour of the complainant. There is no illegality or impropriety in the said finding. Moreover, no evidence had been adduced to probabalise the alleged issuance of signed blank cheques to the said Mini.

4. 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.

5. The courts below had concurrently found that the complainant/2nd respondent had successfully discharged 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 2nd respondent. So also, it

is found that the debt due to the 2nd respondent was a legally enforceable debt and Ext.P1 cheque was duly executed and issued in discharge of the said debt.

6. 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.

7. 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 sometime to pay the compensation, if this revision is found meritless as he is unable to raise the said amount forthwith due to paucity of funds.

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 five months time to pay the compensation. Consequently, this 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. The Revision Petitioner shall pay a compensation of Rs.95,000/- (Rupees Ninety Five thousand only) to the 2nd

respondent/complainant under Section 357(3) Cr.P.C within a period of five months from today. 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 needs to 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 28th December, 2015 with sufficient proof to show payment of compensation .

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

The Criminal Revision Petition is disposed of accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge