

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

Crl.Rev.Pet.No. 2356 of 2005 (D2)

(CRL.A 162/2002 of SESSIONS COURT, THIRUVANANTHAPURAM)
(CC 504/1999 of J.F.C.M.COURT-II,NEDUMANGAD)

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REVISION PETITIONER(S)/APPELLANT/ACCUSED.:

JAYACHANDRAN NAIR, S/O.VIKRAMAN NAIR,
DARPPAYIL VEEDU, CHAYAM, THALICODE VILLAGE.

BY ADVS.SRI.R.T.PRADEEP
SRI.V.VIJULAL

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

1. THE STATE OF KERALA, REPRESENTED BY THE
DIRECTOR GENERAL OF PROSECUTION, HIGH COURT OF KERALA,
ERNAKULAM.

2. SANKARA NARAYANAN NAIR, S/O.KRISHNA PILLAI,
KUNNATHU VEEDU, KALATHARA,
KOKKOTHAMANGALAM MURI, ARUVIKKARA VILLAGE.

R2 BY ADV. SRI.T.A.UNNIKRISHNAN

R2 BY ADV. SRI.K.SATHEESH KUMAR

R1 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

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

OKB

K.HARILAL, J.

Crl.R.P. No.2356 of 2005

Dated this the 7th day of July, 2015.

O R D E R

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.162/02 on the files of the court of the 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.504/99 on the files of the Judicial First Class Magistrate's Court-II, Nedumangad. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for one day till rising of the court and

to pay Rs.58,000/- as compensation under Section 357(3) of the Cr.P.C. and in default to undergo simple imprisonment for six months.

2. The complainant's case is that the accused had borrowed a sum of Rs.58,000/- from the complainant and in discharge of the said liability the accused issued a cheque dated 8.9.1999, which, on presentation for encashment in the bank, got dishonoured due to insufficient funds. Thus, the accused committed the offence under Section 138 of the N.I. Act. In the statement under Section 313 of the Cr.P.C., the accused stated that the cheque in question was issued by him towards security to the complainant as a blank cheque, when he availed of a loan of Rs.40,000/- from the complainant. It is also stated that out of Rs.40,000/- he had repaid Rs.30,000/-. But the complainant did not return the cheque, which was entrusted to him and thereafter he misused the same to file a complaint. However, the accused has not adduced any evidence to substantiate the defence story at least with the yardstick of preponderance of probability. So also,

though the complainant was cross-examined at length and into minute details, nothing was brought out to discredit the evidence given by him. Thus, the accused miserably failed to probabilise the defence contention or to improbabilise the complainant's case. In the above context, the court below found that the accused has miserably failed to rebut the presumption under Sections 118(a) and 139 of the N.I. Act. I do not find any kind of perversity in the appreciation of evidence and there is no illegality or impropriety in the above findings.

3. The courts below had concurrently found that the complainant/2nd respondent had successfully discharged the initial burden of proving execution and issuance of the cheque; whereas the revision petitioner had failed to rebut the presumption under Sections 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.Pl cheque was 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 compensation as he is unable to raise the said amount forthwith due to paucity of funds, if this revision petition is found liable to be dismissed.

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 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. He shall pay a compensation of Rs.58,000/- (Rupees Fifty eight thousand only) within a period of three months from today to the 2nd respondent/complainant 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 as ordered above on or before 7/10/2015 with sufficient proof to show payment of compensation.
- iv. In default, he shall undergo simple imprisonment for a period of three months.
- v. If the revision petitioner had deposited any amount in the trial court, in compliance with the direction of this Court or appellate court, that amount shall be given credit to and the balance alone need be paid as compensation. In that event, the 2nd respondent/complainant is allowed to realise such deposit, if any.

The Criminal revision petition is disposed of accordingly.

K. HARILAL, JUDGE

okb.