

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

Cr1.Rev.Pet.No. 2391 of 2005 (D)

AGAINST THE JUDGMENT IN CRL.A 633/2002 of I ADDL. SESSIONS
COURT, KOZHIKODE DATED 05-03-2005

AGAINST THE JUDGMENT IN CC 383/2001 of J.F.C.M.COURT-I,
THAMARASSERY DATED 27-11-2002

REVISION PETITIONER/APPELLANT/ACCUSED:

K.SHIJU, S/O.DR.HARIDAS,
ITATHIL HOUSE, EENGAPPUZHA VILLAGE, PUTHUPPADY.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. RAJESH GEORGE, S/O.GEORGE,
ITTIAPPARA HOUSE, PUTHUPPADI AMSOM, DESOM.

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

R1 BY ADV. SRI.SUNNY MATHEW

R2 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.2391 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.633/2002 on the files of the court of the I Additional Sessions Judge, Kozhikode Division. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in C.C.No.383/2001 on the files of the Judicial First Class Magistrate's Court-I, Thamarassery. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for one day till the

rising of the court and to pay to the complainant Rs.50,000/- as compensation under Section 357(3) of the Cr.P.C. and in default to undergo simple imprisonment for two months.

2. The case of the complainant is that he had advanced a loan for Rs.50,000/- to the accused and in discharge of the said liability the accused issued Ext.P1 in his favour for the said amount and when the cheque was presented for encashment, it got dishonoured for want of sufficient funds. Though the complainant caused to issue a lawyer notice, the accused neither paid the said amount nor sent a reply notice denying the said liability. In defence, the accused contended that he had borrowed Rs.6,000/- only from the complainant and at the time of said borrowal he issued a signed blank cheque to the complainant as security only. But in Ext.D1 reply notice, he has no such case. After analysing the evidence of P.W.1, the court below observed that there is no reason to believe the evidence of P.W.1; but the

defence contention is inconsistent and unbelievable. The evidence of D.W.I is unreliable as well as unbelievable. Thus, the accused 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 in the above findings.

3. The courts below had concurrently found that the complainant/1st 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 Section 118(a) and 139 of the N.I. Act which stood in favour of the 1st respondent. So also, it is found that the debt due to the 1st 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.50,000/- (Rupees Fifty thousand only) to the 1st respondent/complainant within a period of three months from today, 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 two 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 1st respondent/complainant is allowed to realise such deposit, if any.

The Criminal revision petition is disposed of accordingly.

K. HARILAL, JUDGE

okb.