

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

Cr1.Rev.Pet.No. 3335 of 2004 (B)

AGAINST THE JUDGMENT IN CRL.A 77/2002 of ADDL. SESSIONS COURT
(ADHOC), KALPETTA DATED 12-08-2004
AGAINST THE JUDGMENT IN CC 572/1999 of J.M.F.C.-I,
SULTHANBATHERY DATED 6-6-2002

REVISION PETITIONER/APPELLANT/ACCUSED:

A.C.THOMAS, S/O. CHACKO,
APPAKKOTIL VEEDU, KALATHUVAYAL P.O., AMBALAVAYAL,
WAYANAD.

BY ADV. SRI.T.KRISHNAN UNNI (SR.)

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE:

1. A.P.AUGUSTINE, S/O. PAILI,
IDASSERI THOTTATHIL VEEDU, KALATHUVAYAL P.O.,
AMBALAVAYAL, WAYANAD.

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

R1 BY ADV. SMT.K.V.RESHMI

R2 BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 11-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Crl.R.P. No.3335 of 2004

Dated this the 11th day of June, 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.77/2002 on the files of the court of the Additional Sessions Judge (Ad hoc), Kalpetta, Wayanad. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in C.C.No.572/1999 on the files of the Judicial First Class Magistrate's Court-I, Sulthanbathery. According to the impugned judgment, the revision petitioner was sentenced to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment for one month, and to pay a compensation of Rs.1,40,000/- and in default to

undergo simple imprisonment for three months under Section 357(3) of the Cr.P.C.

2. 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.

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. The revision petitioner submitted 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.

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. Coming to the sentence, I find that the modified sentence imposed by the court below is illegal and unsustainable. The court below has committed grave illegality by imposing both fine and compensation separately and the compensation amount is more than the fine amount. Therefore, the modified sentence imposed by the court below is set aside and 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. He shall pay a compensation of Rs.1,40,000/- to the complainant/1st respondent 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 11.9.2015 with

sufficient proof for payment of compensation.

iv. In default, he shall undergo simple imprisonment for three months.

The Criminal revision petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.