

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

Crl.Rev.Pet.No. 2149 of 2009

**CRLA 334/2006 of ADDL. DISTRICT & SESSIONS COURT (ADHOC), FAST TRACK -III,
PATHANAMTHITTA
ST 576/2005 of J.F.C.M.COURT-II, PATHANAMTHITTA**
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REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**K.ANANDAN, RENJU BHAVAN
THANKATHODU P.O , THOOMPAKULAM, KONNY.**

BY ADV. SRI.S.SACHITHANANDA PAI

RESPONDENT(S)/RESPONDENTS/DEFENDANTS:

- 1. JALALUDDIN RAWTHER, KURIKKADU VEEDU,
CHITTOOR MURI, PATHANAMTHITTA.**
- 2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

R2 BY PUBLIC PROSECUTOR SRI. JOBY JOSEPH

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26-03-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

OKB

K.HARILAL, J.

Cr1.R.P. No.2149 of 2009

Dated this the 26th day of March, 2015.

O R D E R

1. 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.334/2006 on the files of the court of the Additional District & Sessions Judge (Ad hoc), Fast Track-III, Pathanamthitta. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in S.T.No.576/2005 on the files of the Judicial First Class Magistrate's Court-II, Pathanamthitta. 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 a fine of Rs.32,000/- and in default to undergo simple imprisonment for four months. The fine amount, if realised, was ordered to be paid to the 1st respondent under Section 357(1)(b) 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. The courts below had concurrently found that the complainant/1st 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 1st respondent. So also, it is found that the debt due to the 1st respondent was a legally enforceable debt and Ext.P1 cheque was duly executed and issued in discharge of the said debt. 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 at. Therefore, I am not inclined to re-appreciate entire evidence once again and I confirm the concurrent findings of conviction.

3. 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. He further submits that the revision petitioner is willing to pay the fine as ordered by the court below; but he is unable to raise the said amount forthwith due to paucity of funds. But he is ready to pay the fine within three months.

4. 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.

5. The learned counsel for the revision petitioner submits that after the dismissal of the appeal on 14.1.2008 the revision petitioner has paid Rs.25,000/- to the complainant /1st respondent directly towards fine which is payable as compensation to the complainant and the 1st respondent has issued a receipt thereof also. But I am of the opinion that it is for the revision petitioner to convince the trial court that he has paid Rs.25,000/- towards fine which is payable as compensation and the matter will stand left with the satisfaction of the concerned trial court. However, the modified sentence of fine will stand re-converted to compensation payable directly to the complainant.

6. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, expressing willingness to pay the compensation, the revision petitioner is given three months time to pay the compensation. Consequently, this Revision Petition is liable to be 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.32,000/- (Rupees thirty two thousand only) to the 1st respondent/complainant, under Section 357(3) of the Cr.P.C., within a period of three months from today.
- iii. He shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 26/6/2015 with sufficient proof to show payment of compensation.
- iv. In default, he shall undergo simple imprisonment for a period of one month.

This Criminal Revision Petition is disposed of accordingly.

Sd/–
(K.HARILAL, JUDGE)

okb.