

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

Crl.Rev.Pet.No. 2689 of 2005 ()

Cr1.A 160/2004 of SESSIONS COURT, ALAPPUZHA

CC 253/2003 of J.M.F.C.-II(MOBILE),ALAPPUZHA

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

MATHAI RAJU, S/O. MATHAI,
MUNDAKATTIL VEEDU, THIRUMOLAPURAM P.O., THIRUVALLA.

BY ADV. SRI.S.SUBHASH CHAND

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE::

1. A.G. VARGHESE, ALUMMOOTIL HOUSE,
PODIYADI P.O., THIRUVALLA.

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

R1 BY ADV. SRI.C.S.MANU

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 29-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No. 2689 of 2005

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Dated this the 29th day of June, 2015

ORDER

The revision petitioner is the accused in C.C.No. 253/2003 on the files of the Judicial First Class Magistrate's Court-II (Mobile), Alappuzha as well as the appellant in Crl.Appeal No. 160/2004 on the files of the Sessions Judge, Alappuzha. He was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act on a complaint filed by the 1st respondent herein. After trial, the learned Magistrate found the revision petitioner guilty of the said offence and convicted thereunder. He was sentenced to undergo simple imprisonment for three months and to pay a compensation of Rs.2,85,000/- to the complainant under Section 357(3) of the Cr.P.C. In default, to undergo simple imprisonment for a further period of six months. The accused is also ordered to pay ₹2,000/- to the

complainant, which, if not paid, he shall undergo simple imprisonment for a further period of 15 days under Section 359 of the Cr.P.C. Though he had preferred the above Crl. Appeal, the appellate court also confirmed the conviction and sentence as such without any interference. The legality and propriety of the concurrent findings of conviction and sentence are under challenge in this revision petition.

2. The learned counsel for the petitioner/accused submits that the entire dispute between the petitioner and the 1st respondent had been settled by way of paying compensation directly to the complainant. The learned counsel for the 1st respondent/ complainant submits that the matter is settled out of court and the 1st respondent/complainant has received the compensation directly from the petitioner and now, the complainant has no subsisting grievance at all and he does not intend to proceed against the petitioner.

3. In view of the payment of compensation, the learned counsel for the petitioner prayed for modifying the substansive sentence of imprisonment for 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 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.

5. In view of the nature and gravity of the offence under Section 138 of the N.I.Act and payment of

compensation, subsequent to the passing of the impugned judgment under challenge, the substantive sentence of imprisonment for three months will stand set aside. It is made clear that the default sentence will not come into operation.

The revision petition is disposed of.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge