

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

Crl.Rev.Pet.No. 2732 of 2005 (B1)

AGAINST THE JUDGMENT IN CRL.A 308/2003 of III ADDITIONAL
SESSIONS COURT (ADHOC), FAST TRACK COURT-I, THRISSUR
DATED 28-06-2004

AGAINST THE JUDGMENT IN ST 9018/1999 of J.M.F.C., IRINJALAKUDA
DATED 22-04-2003

REVISION PETITIONER(S)/APPELLANT/ACCUSED.:

JOY, S/O.KALLIKKADAN LAZAR,
KALLIKKADAN HOUSE, PORATHUSSERY, MADAIKONAM,
NOW RESIDING AT RAILWAY STATION ROAD,
IRINJALAKUDA.

BY ADVS.SRI.GEORGE VARGHESE (MANACHIRACKEL)
SRI.V.J.ANAND

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

1. SAJAYAKUMAR, S/O.KURIYAKATTIL SARADAMMA,
EDAKULAM DESOM, MUKUNDAPURAM TALUK.

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

R1 BY ADV. SRI.G.SREEKUMAR (CHELUR)

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 09-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Crl.R.P. No.2732 of 2005

Dated this the 9th 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.308/2003 on the files of the court of the III Additional Sessions Judge (Ad hoc), Fast Track-I, Thrissur. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in S.T.No.9018/1999 on the files of the Judicial First Class Magistrate's Court, Irinjalakuda. 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 to the complainant Rs.30,000/- as compensation and in default to undergo simple imprisonment for one month.

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. 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.

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, in the light of the decisions quoted above and submission made at the Bar, I am inclined to grant 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.30,000/-

(Rupees Thirty thousand only) to the 1st respondent/complainant, 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 10/9/2015 with sufficient proof to show payment of compensation.

iv. In default, he shall undergo simple imprisonment for a period of one month.

The Criminal revision petition is disposed of accordingly.

K. HARILAL, JUDGE

okb.