

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

Crl.Rev.Pet.No. 3491 of 2005

AGAINST THE JUDGMENT IN CRL.A.NO. 76/2003 of ADDL. DIST.
& SESSIONS COURT (ADHOC) FAST TRACT-III, PATHANAMTHITTA
DATED 31-10-2005

AGAINST THE JUDGMENT IN CC 350/2001 of C.J.M. COUR,
PATHANAMTHITTA DATED 17-02-2003

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

ABDUL LATHEEF @ ANEESH, AGED 30 YEARS,
S/O. MUHAMAD ALI, CHINNALABBA VEEDU, PETTA,
PATHANAMTHITTA.

BY ADV. SRI.S.SHANAVAS KHAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. DANIEL GEORGE,
PROPRIETOR, TOJO TYRES & AGENCIES, PATHANAMTHITTA.

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

R1 BY ADV. SRI.T.MADHU

BY ADV. SRI.ROY THOMAS (PATHANAMTHITTA)

R2 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 18-09-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No. 3491 of 2005

Dated this the 18th day of September, 2015

ORDER

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.76/2003 on the files of the Additional District & Sessions Judge, (Ad-hoc), Fast Tract Court-III, Pathanamthitta. The above appeal was filed challenging the judgment whereby the Revision Petitioner was guilty of the said offence, passed in C.C.No.350/2001 on the files of the Chief Judicial Magistrate's Court, Pathanamthitta. According to the

impugned judgment, the Revision Petitioner stands sentenced to pay a fine of ₹37,500/- and in default, to undergo simple imprisonment for 30 days. The fine amount shall be paid to P.W.1/complainant as compensation under Sec.357(1) of the Cr.P.C.

2. The case of the complainant is that the accused purchased tyres from his shop and in discharge of the balance amount due under the said transaction, the accused drawn and issued Ext.P1 cheque for an amount of ₹37,500/- and when he presented the cheque for encashment, the same was dishonoured and returned for want of sufficient funds and thereby the accused committed the offence alleged against him.

3. In the statement under Sec.313 of the Cr.P.C., the accused admitted that he purchased tyre for Rs.1,00,000/-; but he discharged the said liability and no amount is due from him. Though the complainant has discharged his initial burden to prove the execution and issuance of the cheque successfully and

thereby the presumptions under Secs.139 and 118(a) of the N.I. Act stood in favour of the complainant. But no evidence, either oral or documentary, had been produced by the accused to rebut the presumptions which stood in favour of the complainant. He has not adduced any evidence to show that he discharged the liability by paying the amount due under the purchase of tyre. So, the courts below are justified in finding that the accused miserably failed to rebut the presumptions, which stood in favour of the complainant.

4. 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.

5. 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 appreciation of evidence, from which the above findings had been arrived. Therefore, I am not inclined to re-appreciate entire evidence once again and I confirm the concurrent findings of conviction.

6. The Revision Petitioner submitted that the sentence imposed on the Revision Petitioner is disproportionate with the gravity and nature of the offence contemplated under Sec.138 of the N.I. Act. The learned counsel further sought for some time to pay the compensation, if this revision is found meritless, as he is unable to raise the said amount forthwith due to paucity of funds.

7. 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.

8. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, seeking some time to pay the compensation, 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 pay a

fine of ₹37,500/- (Rupees Thirty seven thousand and five hundred only) within a period of three months from today and the same shall be given to the 1st respondent/complainant as compensation under Sec.357(1)(b) of the Cr.P.C.

ii. In default, the Revision Petitioner shall undergo simple imprisonment for a period of one month.

The Criminal Revision Petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge