

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

Cr1.Rev.Pet.No. 314 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 334/2011 of ADDITIONAL
DISTRICT & SESSIONS COURT, MOOVATTUPUZHA DATED 28-10-2011

AGAINST THE JUDGMENT IN CC 35/2008 of JUDICIAL MAGISTRATE
OF FIRST CLASS, KOTHAMANGALAM DATED 25-05-2011

REVISION PETITIONER/APPELLANT/ACCUSED:

P.S.SUJETH, AGED 47 YEARS,
S/O.V.K.SREEDHARAN, PUTHENPURACKAL, GEO COTTAGE,
THILAK CLUB ROAD, AYYAPPANKAVU, ERNAKULAM,
KOCHI-18.

BY ADV. SRI.PRAVEEN K. JOY

RESPONDENT & STATE/COMPLAINANT:

1. SATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM/682 031,
REPRESENTED BY S.I., KOTHAMANGALAM.

2. DAVIS ANTONY, AGED 40 YEARS,
OLIYAPPURAM HOSUE, KOTHAMANGALAM P.O.,
KOTHAMANGALAM TALUK, ERNAKULAM DISTRICT.

R2 BY ADV. SRI.P.GOPAKUMARAN NAIR
BY ADV. SRI.C.S.DIAS
BY ADV. SRI.N.K.SUBRAMANIAN

R1 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 22-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.314 of 2015

Dated this the 22nd day of June, 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.334 of 2011 on the files of the Additional Sessions Judge, Muvattupuzha. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.35 of 2008 on the files of the Judicial First Class Magistrate's Court, Kothamangalam. According to the impugned judgment, the Revision Petitioner is sentenced to

undergo simple imprisonment for one year and to pay a fine of ₹7,21,000/- under Sec.138 of the N.I. Act. In default of payment of fine, the accused shall undergo simple imprisonment for a further period of six months. The fine amount, if realised, shall be paid in full to the complainant under Sec.357(1) 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/2nd 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 2nd respondent. So also, it is found that the debt due to the 2nd 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. Therefore, I am not inclined to re-appreciate entire evidence once again and I confirm the concurrent findings of conviction.

3. The counsel for the Revision Petitioner submits that challenge under this Revision is confined to sentence only. 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 compensation 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 compensation within six months.

4. Similarly, the substantive sentence imposed on the revision petitioner is too harsh and excessive. The learned counsel for the revision petitioner prayed for setting aside the sentence of imprisonment also. If the revision petitioner is incarcerated for a period as ordered by the courts below, the entire family will put in great hardship.

5. 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.

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 within six months, I am inclined to grant six months time to pay the compensation. Similarly, the substantive sentence of imprisonment for a period of one year is reduced and modified to simple imprisonment for one day till rising of the court. In supersession of the sentence imposed by the trial court and confirmed by the appellate court, 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. The Revision Petitioner shall pay Rs.7,21,000/- (Rupees Seven lakhs and twenty one thousand only) to the 2nd respondent within a period of six months from today as compensation under Sec.357 (1) of the Cr.P.C.

iii. If the revision petitioner had

deposited any amount, in compliance with the interim order of this Court, the same shall be given credit to and the balance alone needs to be paid as compensation. In that case, the complainant is allowed to withdraw such deposit, if any, also.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 22/12/2015 with sufficient proof to show payment of compensation.

iv. In default, the Revision Petitioner shall undergo simple imprisonment for a period of four months.

The Criminal Revision Petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge