

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

Crl.Rev.Pet.No. 333 of 2015 (B1)

AGAINST THE JUDGMENT IN CRLA 412/2013 of SESSIONS COURT, PALAKKAD DATED 30-09-2014

AGAINST THE JUDGMENT IN ST 36/2012 of J.M.F.C. - II, OTTAPPALAM DATED 13-11-2013

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REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**T.A. AYOOB, AGED 48 YEARS,
S/O.KHADEEJA, THERUVATHAKATH, KANJIRAKADAVIL P.O,
OTTAPALAM TALUK.**

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE :

**1. P.P.MOHAMMED,, AGED 58 YEARS
S/O.ABUTTY, PANIKARUPARAMBIL HOUSE, KOTTAPURAM P.O,
OTTAPALAM TALUK, REP.BY POWER OF ATTORNEY CUM MANAGER
M. P .MUHAMMED ALI,
S/O.LATE HYDRU, MOTHIRAPEEDIKA HOUSE,
KADAMPAZHIPURAM AMSOM, AZHIYANNUR DESOM,
OTTAPALAM TALUK-678 001.**

**2. THE STATE OF KERALA,
REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM-682031.**

R2 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 26-05-2015, ALONG WITH CRRP.373/2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

OKB

K.HARILAL, J.

Cr1.R.P. Nos.333 & 373 of 2015

Dated this the 26th day of May, 2015.

O R D E R

These revision petitions are 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 Nos.412/2013 & 413/2013 on the files of the court of Sessions Judge, Palakkad. The above appeals were filed challenging the common judgment finding that the revision petitioner is guilty of the said offence, passed in S.T.Nos.36/2012 & 37/2012 on the files of the Judicial First Class Magistrate's Court-II, Ottapalam. According to the impugned judgments, the revision petitioner was sentenced to undergo simple imprisonment for one day till rising of the court and to pay to the complainant

Rs.65,000/- as compensation under Section 357(3) of the Cr.P.C. and in default to undergo simple imprisonment for three months, in each case.

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 cheques; 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 Exts.P1 & P2 cheques were 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 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, expressing willingness to pay the compensation, I am inclined to grant five months time in each case to pay the compensation. Consequently, these revision petitions will stand disposed of subject to the following terms:

- i. The revision petitioner, in each case, shall undergo simple imprisonment for one day till rising of the court. It shall run

concurrently, if both payments were made before appearance before the Trial Court.

- ii. He shall pay Rs.65,000/- (Rupees Sixty five thousand only) each as compensation to the 1st respondent/complainant, under Section 357(3) of the Cr.P.C., within a period of five months from today, in each case.
- iii. He shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above, on or before 27.10.2015 with sufficient proof to show payment of compensation in each case.
- iv. In default, he shall undergo simple imprisonment for a period of three months in each case.

The Criminal revision petitions are disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.