

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

Crl.Rev.Pet.No. 397 of 2015 ()

**AGAINST THE JUDGMENT IN CRA 724/2011 of ADDITIONAL DIST. & SESSIONS
COURT,MUVATTUPUZHA DATED 28-06-2012**

**AGAINST THE JUDGMENT IN ST 1384/2010 of JUDICIAL FIRST CLASS MAGISTRATE
COURT, KOLENCHERRY DATED 19-11-2011**

REVISION PETITIONER(S)/APPELLANT-ACCUSED :

**M.K.MURALIDHARAN, AGED 41 YEARS,
S/O.KUMARAN, PEECHINGAPARAMBIL HOUSE, MANATHUPADOM,
CHANGAMPUZHA NAGAR, COCHIN-682 038.**

**BY ADVS.SRI.C.ANILKUMAR (KALEESSERIL)
SRI.C.Y.VINOD KUMAR**

RESPONDENT(S)/COMPLAINANT & STATE :

- 1. M/S.ANAND GROUP, ENGINEERS BUILDERS AND DEVELOPERS,
37/939, A3, ANAND ARCADE, S.A.ROAD, KOCHI-682 020.,
REPRESENTED BY ITS CHIEF EXECUTIVE K.ANANDAN NAMBIAR.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTR
HIGH COURT OF KERALA, ERNAKULAM.**

R2 BY SRI.JIBU P. THOMAS, PUBLIC PROSECUTOR

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 25-05-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

AMV

K.HARILAL, J.

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Crl.R.P.No.397 of 2015 (D)

.....
Dated this the 25th day of May, 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.724 of 2011 on the files of the court of the Additional District & Sessions Court, Muvattupuzha. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in S.T.No.1384 of 2010 on the files of the Judicial First Class Magistrate's Court, Kolenchery. 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 a fine of Rs.53,000/-. In default the revision petition shall undergo simple imprisonment for one month. If the fine amount is remitted or recovered, the same shall be given to the complainant as compensation under Section 357(1) of 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 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.P1 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 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 six months time to pay the compensation. Substantive sentence of simple imprisonment for three months will stand reduced and modified to simple imprisonment for one

day till rising of the court only. 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 fine of Rs.53,000/- (Rupees Fifty three thousand only) and the same shall be given to the 1st respondent/complainant, as compensation under Section 357(1) of the Cr.P.C., within a period of four 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 29.09.2015 with sufficient proof to show payment of Rs.53,000/- as fine.
- iv. In default, he shall undergo simple imprisonment for a period of three months.

The Criminal revision petition is disposed of accordingly.

Sd/-
K.HARILAL,
JUDGE.