

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYAISHTA, 1937

Crl.Rev.Pet.No. 402 of 2015

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AGAINST THE JUDGMENT IN CRL.A.NO. 74/2008 of II  
ADDITIONAL SESSIONS JUDGE, THALASSERY DATED 17-09-2014.

AGAINST THE JUDGMENT IN ST 67/2007 of J.M.F.C. (MUNSIFF),  
PAYYANNUR DATED 13-02-2008.

REVISION PETITIONER(S)/APPELLAND/ACCUSED:

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T.K. SWAPNA, AGED 40 YEARS,  
D/O.T.K.PADMAVATHY, MAMBALAM,  
NEAR MAMBALAM BHAGAVATHY TEMPLE, POST PAYYANNUR,  
THALIPARAMBA TALUK, KANNUR DISTRICT.

BY ADV. SRI.I.V.PRAMOD

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE:

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1. KANNOTH JANARDHANAN,  
S/O.T.V.KAMMARAN, KANNNOTH VEEDU, POST PAYYANNUR,  
KANNUR DISTRICT. 670 607.

2. STATE OF KERALA,  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM 682031.

R1 BY ADV. SRI.M.V.AMARESAN

BY ADV. SRI.V.N.RAMESAN NAMBISAN

R2 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING COME UP  
FOR ADMISSION ON 12-06-2015, THE COURT ON THE SAME DAY  
PASSED THE FOLLOWING:

**K. HARILAL, J.**

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**Crl.R.P. No.402 of 2015**  
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**Dated this the 12<sup>th</sup> 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.74 of 2008 on the files of the II Additional Sessions Judge, Thalasssery. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T.C.No.67 of 2007 on the files of the Judicial First Class Magistrate's Court (Munsiff), Payyannur. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple

imprisonment for one day till rising of the court and to pay a compensation of ₹1,75,000/- to complainant under Sec.357(3) of the Cr.P.C. In default of payment of compensation, the accused shall undergo simple imprisonment for a period four months.

2. The complainant's case is that the accused owed an amount of ₹1,75,000/- to him and towards the discharge of that liability, the accused had issued Ext.P1 cheque and when the cheque was presented for encashment, the same was dishonoured for want of sufficient fund.

3. Per contra, the accused contended, in defence, that her mother had some financial transactions with the Amin Textiles in connection with the purchase of cloths from Amin Textiles. In the course of that transaction, she had handed over two blank cheques belonging to the accused to Amin Textiles. The complainant has filed the complaint by misusing one of those signed blank cheques which was given to Amin Textiles. But,

no evidence has been adduced by the accused to prove the transactions between the mother of the accused and Amin Textiles. It is also contended that as per the understanding between her mother and Amin Textiles, her mother agreed to hand over her kuri with the Kappad Kazhakam at Keloth before the date of maturity of the kuri to Amin Textiles. After the maturity of the kuri, the promoter i.e., Kappad Kazhakam handed over the kuri to Amin Textiles. There was a liability of ₹9,000/- to Amin Textiles by the mother of the accused and towards that liability, the accused handed over two blank cheques to Amin Textiles. Except the above bare suggestions in Sec.313 statement, absolutely no evidence to substantiate the said contentions, at least, with the yardstick of preponderance of probabilities. In Kumar Exports v. Sharma Carpets [2009 (1) KLT 197 (SC), the Apex Court held that bare denial of consideration or existence of data is not sufficient, something

probable has to be brought on record for getting the burden of proof shifted to the shoulders of the complainant. In the instant case, no evidence has been adduced to probabalise the defence story put up in Sec.313 statement.

4. In the above context, the court below can be justified in finding that the accused miserably failed to rebut the presumption under Secs.139 and 118(a) of the N.I. Act.

5. In the Memorandum of Revision Petition, the revision petitioner reiterated the contentions which were raised before the courts below and got rejected concurrently. The revision petitioner 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.

6. The courts below had concurrently found that the complainant/1<sup>st</sup> 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 1<sup>st</sup> respondent. So also, it is found that the debt due to the 1<sup>st</sup> respondent was a legally enforceable debt and Ext.P1 cheque was duly executed and issued in discharge of the said debt.

7. 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.

8. It is also contended 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.

9. 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.

10. Having regard to the nature and gravity of

the offence, in the light of the decisions quoted above, I find that the sentence imposed on the revision petitioner is a little excessive and disproportionate with the nature and gravity of the offence. Consequently, in supersession of the sentence imposed on the revision petitioner, by the courts below, the revision petitioner will stand convicted as follows:

i. The Revision Petitioner shall undergo simple imprisonment for one day till rising of the court.

ii. The Revision Petitioner shall pay ₹1,75,000/- (Rupees One lakh and seventy five thousand only) to the 1<sup>st</sup> respondent as compensation under Sec.357(3) of the Cr.P.C. within a period of three months from today.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered

above on or before 14/9/2015 with sufficient proof to show payment of compensation.

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

The Criminal Revision Petition is disposed of accordingly.

**(K. HARILAL, JUDGE)**

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