

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

Crl.Rev.Pet.No. 4550 of 2006 ()

CRL.A 112/2003 of ADDL. DISTRICT & SESSIONS JUDGE (ADHOC-III),
KOLLAM

C.C 368/2000 of J.M.F.C.-II, KOLLAM

REVISION PETITIONER/APPELLANT/ACCUSED:

ANIL KUMAR V.R.
PHOTOGRAPHER, REVATHI PHOTOS & VIDEOS, CHANDANATHOPE
KOLLAM, RESIDING AT ANJANA, CHANDANATHOPE
KOLLAM.

BY ADV. SRI.S.NARAYANAN NAIR

RESPONDENT(S)/RESPONDENTS/COMPLAINANTS:

1. R.HEMACHANDRAN, LATHEENDRAM,
KAIKULANGARA NORTH, KOLLAM-12.

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

R1 BY ADV. SRI.S.SANTHOSH KUMAR

R2 BY PUBLIC PROSECUTOR SRI.JIBU.P.THOMAS.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 17-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

STU

K.HARILAL, J.

=====

Crl.R.P.No. 4550 of 2006

=====

Dated this the 17th day of July, 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.112/2003 on the files of the Additional District and Sessions Judge (Adhoc-III), Kollam. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.368/2000 on the files of the Judicial First Class Magistrate's Court-II, Kollam. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for one month and to pay a fine of ₹ 5,000/-, out of which, an amount of ₹4,000/- shall be paid to

the complainant by way of compensation under Section 357 (3) of the Code of Criminal Procedure and in default, to undergo simple imprisonment for one month.

2. The complainant's case is that in discharge of a legally enforceable liability to him, the accused issued Ext.P1 cheque for an amount of ₹60,000/-. When the said cheque was presented for encashment, the same was dishonoured and returned for want of sufficient funds. Though he had caused to issue a lawyer's notice, the accused did not pay the said amount nor did he send a reply denying the transaction. In defence, the accused contended that his wife had stolen away Ext.P1 cheque in the form of blank signed cheque and handed over the same to the complainant and the complainant initiated the prosecution against him by misusing the said cheque. To prove the said contention, his brother and sister were examined as DWs.1 and 2. After analyzing the evidence of DWs.1 and 2, the courts below concurrently found that the testimonies of

DWs.1 and 2 are improbable and unbelievable. so also, the failure to sent a reply speaks volume and if the defence version was true, he could have given an instruction to the bank to stop payment. In the above view, there is no illegality or impropriety in the findings that the accused miserably failed to rebut the presumption which stood in favour of the complainant.

3. 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.

4. The courts below had concurrently found that the

complainant/1st 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 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.

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. At last, 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.

7. Similarly, the substantive sentence imposed on the revision petitioner is too harsh and excessive. 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.

8. 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.

9. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, I am inclined to grant three months time to pay the compensation. Similarly, the substantive sentence of imprisonment is reduced and modified to simple imprisonment for a period one day till rising of the court. 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. The Revision Petitioner shall pay a compensation of Rs.60,000/- (Rupees Sixty thousand only) to the 1st respondent within a period of three months from today. If the petitioner had deposited any amount in the trial court in compliance with the interim order of this Court or appellate court, the same shall be given credit to and the balance alone needs to be paid as compensation.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 19th October, 2015 with sufficient proof to show payment of compensation .

iv. 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.

stu

//True copy//

P.A to Judge