

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

Cr1.Rev.Pet.No. 470 of 2015 ()

Cr1.A 657/2013 of ADDL. DISTRICT & SESSIONS COURT - II, NORTH
PARAVUR DATED 19-02-2015

ST 261/2012 of J.M.F.C. - II, NORTH PARAVUR DATED 13-12-2013

REVISION PETITIONER(S)/PETITIONER/ACCUSED :

O.P.JOSHY, AGED 52 YEARS
S/O.LATE PAILY, OLLATTUPURATH HOUSE, MUNAMBAM
PALLIPORT P O, ERNAKULAM DISTRICT - 683 515.

BY ADV. SRI.B.RAMACHANDRAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE:

1. MANUAL A.J.
S/O.LATE JOSEPH, ARRAKKAL HOUSE, MUNAMBAM
PALLIPORT P O, ERNAKULAM DISTRICT - 683 515.

2. STATE OF KERALA
REP BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM - 682 031.

R1 BY ADVS. SRI.P.M.BENZIR
SRI.G.G.MANOJ
SRI.JAICE JACOB
R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 25-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No. 470 of 2015

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Dated this the 25th 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.657/2013 on the files of the Additional District and Sessions Judge-II, N.Paravur. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T.No.261/2012 on the files of the Judicial First Class Magistrate's Court-II, N.Paravur. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for three months and a fine of ₹1,67,860/-, which shall be paid to the complainant as

compensation under Section 357(1) Cr.P.C. In default, to undergo simple imprisonment for six months.

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 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.P3 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. 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 fine as he is unable to raise the said amount forthwith due to paucity of funds, if the Court finds that this revision petition is not admissible on the files under the

revisional jurisdiction.

6. 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.

7. 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.

8. 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 'five' months time to pay the fine. Similarly, the substantive sentence of imprisonment is reduced and modified to simple imprisonment for one day till rising of the court. Consequently, 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 a fine of ₹1,67,860/- (Rupees One lakh Sixty Seven thousand Eight hundred and Sixty only) within a period of 'five' months from today and the same shall be given to the 1st respondent/ complainant as compensation under Section 357(1) of the Cr.P.C.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 25th November, 2015 with sufficient proof to show payment of fine.

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

v. Warrant in execution of the sentence shall be kept in abeyance till 25th November, 2015.

The Criminal Revision Petition is disposed of accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge