

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

Cr1.Rev.Pet.No. 481 of 2015  
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AGAINST THE JUDGMENT IN CRL.A.NO 357/2009 of ADDITIONAL  
DISTRICT & SESSIONS COURT - IV, THIRUVANANTHAPURAM DATED  
20-01-2015.

AGAINST THE JUDGMENT IN CC 1344/2006 of J.M.F.C.-VII,  
TRIVANDRUM DATED 12-05-2009.

REVISION PETITIONER(S)/APPELLANT/ACCUSED:  
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THULASI.A,  
W/O.PARAMESWARAN, DURGA MANDIR, KATTACHAL LANE,  
VETTAMUKKU, THIRUMALA P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.S.KRISHNA KUMAR (MANGALAM)

RESPONDENT(S)/RESPONDENTS/STATE & COMPLAINANT:  
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1. STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM-682 031.

2. ABHILASH,  
S/O.NAGAPPAN NAIR, KRISHNA SREE, KULACODE,  
VELLANADU P.O., THIRUVANANTHAPURAM.

R1 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS.

THIS CRIMINAL REVISION PETITION HAVING COME UP  
FOR ADMISSION ON 21-05-2015, THE COURT ON THE SAME DAY  
PASSED THE FOLLOWING:

**K. HARILAL, J.**

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**Crl.R.P. No.481 of 2015**  
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**Dated this the 21<sup>st</sup> 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.357 of 2009 on the files of the Additional District and Sessions Judge, Thiruvananthapuram. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.1344 of 2006 on the files of the Judicial First Class Magistrate's Court-VII, Thiruvananthapuram. According to the impugned judgment, the Revision

Petitioner is sentenced to imprisonment till rising of the court. The accused is directed to pay a fine of ₹1,00,000/-. Fine amount, if realised, shall be given to the complainant under Sec.357(1) of the Cr.P.C. In default of payment of fine, the accused shall undergo simple imprisonment for three months.

2. The learned counsel for the petitioner submits that the complainant was not examined in evidence and instead of it, his authorised agent was examined as P.W.1. According to the learned counsel for the petitioner, the complainant should have been examined, in evidence, and non-examination of the complainant is fatal to the prosecution case. Going by the impugned judgment under challenge, it could be seen that the original complainant was working abroad and his authorised representative was examined as P.W.1 and he deposed as to the particulars of the entire transaction culminated in the execution and issuance of the cheque. The accused

has miserably failed to establish that the authorised agent has no personal knowledge about the transaction. After analysing the evidence of P.W.1, the trial court found that P.W.1 has succeeded in discharging the initial burden of proving execution and issuance of the cheque. In appeal, the appellate court also reiterated the evidence of P.W.1 and concurred with the findings of the trial court. I do not find any kind of perversity in the appreciation of evidence of the courts below. In that view of the matter, I find that the non-examination of the complainant is not fatal in the instant case.

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/2<sup>nd</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 2<sup>nd</sup> respondent. So also, it is found that the debt due to the 2<sup>nd</sup> respondent was a legally enforceable debt and Ext.P2 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 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 Sec.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.

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, expressing willingness to pay the compensation, I am inclined to grant four months time to pay the compensation. 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 ₹1,00,000/- (Rupees one lakh only) to the 2<sup>nd</sup> respondent as compensation within a period of four 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 22/9/2015 with sufficient proof to show payment of compensation.

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

The Criminal Revision Petition is disposed of accordingly.

Sd/-  
**(K. HARILAL, JUDGE)**

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P.S. to Judge