

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

Crl.Rev.Pet.No. 490 of 2015

AGAINST THE JUDGMENT IN CRAL.A.NO. 94/2012 of II
ADDITIONAL SESSIONS COURT, THODUPUZHA DATED 08-02-2013.

AGAINST THE JUDGMENT IN ST 1249/2008 of J.M.F.C. - I,
IDUKKI DATED 12-04-2012.

REVISION PETITIONER/APPELLANT/ACCUSED:

SHINTO JOSE, AGED 33 YEARS,
S/O.JOSE, CHERAKOTTU HOUSE, MANIPPARA P O,
KARIMPAN KARA, IDUKKI DISTRICT.

BY ADVS.SRI.GEORGE SEBASTIAN
SRI.RAJESH RAJAN

RESPONDENTS/RESPONDENTS/COMPLAINANT AND STATE:

1. THE KERALA STATE COOPERATIVE BANK LIMITED,
IDUKKI BRANCH-685 602.

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

R1 BY ADV. SRI.GEORGE POONTHOTTAM, SC, KERALA
STATE CO.OP BANK LTD.

R2 BY PUBLIC PROSECUTOR SRI. N. SURESH.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 20-05-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No. 490 of 2015

Dated this the 20th 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.94 of 2012 on the files of the II Additional Sessions Judge, Thodupuzha. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T.No.1249 of 2008 on the files of the Judicial First Class Magistrate's Court-I, Idukki. According to the impugned judgment, the Revision

Petitioner is sentenced to undergo imprisonment till rising of the court and to pay a sum of ₹93,000/- to the 1st respondent/complainant. In default of payment of compensation, the accused shall undergo simple imprisonment for one month.

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.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. 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 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.

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 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.

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 five 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 ₹93,000/- (Rupees Ninety three thousand only) to the 1st respondent as compensation within a period of five 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 20/10/2015 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)

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P.S. to Judge