

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

Crl.Rev.Pet.No. 492 of 2015 ()

**AGAINST THE JUDGMENT IN CRA 306/2011 of ADDL. SESSIONS JUDGE-II,
TRIVANDRUM DATED 16.07.2014**

**AGAINST THE JUDGMENT IN CC 165/2007 of JUDICIAL FIRST CLASS MAGISTRATE-V,
(SPL.COURT-MARKLIST CASES), THIRUVANANTHAPURAM DATED 13.05.2011**

REVISION PETITIONER(S)/ACCUSED/APPELLANT :

**P.A. HAKKIM
S/O.PEERU MUHAMMED, SULTHANA MANZIL,
NEAR SAJI HOSPITAL, KAZHAKUTTOM, THIRUVANANTHAPURAM.**

BY ADV. SRI.T.K.ANANDA KRISHNAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANTS/STATE :

- 1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. S.VIJAYA KUMARI, SUCHITHRA BHAVAN, KARAYIL,
KAZHAKUTTOM, THIRUVANANTHAPURAM (DIED).**
- 3. SUCHITHRA, D/O.S.VIJAYA KUMARI,
SANTHOSH BHAVAN, PANAVILA,
NALANCHIRA, THIRUVANANTHAPURAM - 695 024.**

**R3 BY ADV. SRI.G.SUDHEER
R1 BY SMT.MADHU BEN, PUBLIC PROSECUTOR**

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 28-05-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:**

AMV

K.HARILAL, J.

.....
Crl.R.P.No. 492 of 2015 ()

.....
Dated this the 28th 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.306 of 2011 on the files of the court of the Additional Sessions Judge-II, 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.165 of 2007 on the files of the Judicial First Class Magistrate Court-V, Thiruvananthapuram. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for one day till rising of the court and to pay to the complainant Rs.5,00,000/- as compensation under Section 357(1) of Cr.P.C. and in default the accused shall undergo default

imprisonment for a period of eight 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/2nd respondent had successfully discharged the 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 2nd respondent. So also, it is found that the debt due to the 2nd

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 at. 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 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 v. 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 six 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. He shall pay a fine of Rs.5,00,000/- (Rupees Five lakhs only) and the same shall be given to the 2nd respondent/complainant, as compensation under Section 357(1) of the Cr.P.C., within a period of six months from today.
- iii. He shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 30.11.2015 with sufficient proof to show payment of Rs.5,00,000/-.
- iv. In default, he shall undergo simple imprisonment for a period of three months.

The Criminal revision petition is disposed of accordingly.

Sd/-
K.HARILAL,
JUDGE.

AMV/28/05/

/TRUE COPY/

P.A.TO JUDGE