

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

Crl.Rev.Pet.No. 4645 of 2006 ()

CRL.A 369/2000 of ADDL. SESSIONS COURT, FAST TRACK (ADHOC)
NO -II, THIRUVANANTHAPURAM

CC 370/1997 of J.M.F.C.-I, ATTINGAL

REVISION PETITIONER/APPELLANT/ACCUSED:

S.SADASIVAN, FLAT NO.E.7,
POLICE QUARTERS, PALAYAM, THIRUVANANTHAPURAM.

BY ADV. SRI.BIJU BALAKRISHNAN

RESPONDENTS/RESPONDENTS/COMPLAINANT:

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

2. SANTHOSHKUMAR, S/O.SUDEVAN,
ARUNODAYAM, VAKKOM DESOM, VAKKOM VILLAGE
THIRUVANANTHAPURAM DIST.

R2 BY ADVS. SRI.VAKKOM N.VIJAYAN
SMT.VINITHA PRASANNAN
SRI.P.ANIYAN
SMT.REENA.C.STEPHENSON
SRI.A.S.SACHIN

R1 BY PUBLIC PROSECUTOR SRI.JIBU.P.THOMAS.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 14-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No.4645 of 2006

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Dated this the 14th 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.369/2000 on the files of the Additional Sessions Judge, Fast Track (Adhoc) No.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.370/1997 on the files of the Judicial First Class Magistrate's Court-I, Attingal. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for one day till rising of the court and to pay a compensation of ₹1,50,000/- to the complainant

under Section 357(3) of the Code of Criminal Procedure and in default, to undergo simple imprisonment for three months.

2. The complainant's case is that the accused borrowed an amount of ₹1,50,000/- and in discharge of that liability, he issued Ext.P1 cheque for the said amount to him and when he presented the cheque for encashment, the same was dishonoured and returned for want of sufficient funds.

3. The case of the accused was that Ext.P1cheque was given as a security to the complainant, when the complainant gave ₹15,000/- as part payment of the chitti amount due to him from the complainant. But, when the complainant was cross examined, the accused has not suggested such a case to him. So also, he did not send a reply notice taking this contention. His silence despite the receipt of notice indicates falsity of the case set up in defence. So the courts below are justified in rejecting the case set up in defence.

4. 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.

5. The courts below had concurrently found that the complainant/2nd 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 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.

6. 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.

7. 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 sometime to pay the compensation as he is unable to raise the said amount forthwith due to paucity of funds.

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 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 a compensation of Rs.1,50,000/- (Rupees One lakh Fifty thousand only) to the 2nd respondent/complainant within a period of four months from today. If the petitioner had deposited any amount in

the trial court in compliance with the interim order of this Court or the 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 16th November, 2015 with sufficient proof to show payment of compensation .

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

The Criminal Revision Petition is disposed of accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge