

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

Crl.Rev.Pet.No. 615 of 2015 ()

**AGAINST THE JUDGMENT IN CRL.A 280/2011 of ADDL. D.C. & SESSIONS COURT - IV,
KOLLAM**

AGAINST THE JUDGMENT IN CC 262/2006 of J.M.F.C., PARAVOOR

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**ABDUL KAREEM AGED 47 YEARS
SAHIRA MANZIL, VELICHIKKALA, CHATHANNOOR
KOLLAM**

BY ADV. SRI.M.KIRANLAL

RESPONDENT(S)/RESPONDENT/ COMPLAINANT:

**1. CHATHANNOOR GRAMA PANCHAYAT, REPRESENTED BY ITS SECRETARY
CHATHANNOOR (PO) KOLLAM DISTRICT 691 572**

**2. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, KOCHI-31**

R2 BY PUBLIC PROSECUTOR SRI. JIBU P THOMAS P. THOMAS

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 22-05-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

K.HARILAL, J.

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Crl.R.P.No. 615 of 2015

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Dated this the 22nd 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.280/2011 on the files of the Additional District and Sessions Judge-IV, Kollam. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.262/2006 on the files of the Judicial First Class Magistrate's Court, Paravoor. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment till rising of the court and to pay fine of ₹1,45,000/-. In default, to undergo simple imprisonment

for five months. In the event of remittance of fine, complainant is entitled for the same by means of compensation under Section 357(i) Cr.P.C.

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 Exts.P2 and P3 cheques were 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 sometime to pay the fine 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 two months time to pay the fine. 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 fine of Rs.1,45,000/- (Rupees One lakh Forty Five thousand only) within a period of two months from today and the same shall be given to the 1st respondent/complainant as compensation under Section 357(i) 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 22nd July, 2015 with sufficient proof to show payment of compensation .

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

The Criminal Revision Petition is disposed of accordingly.

**K.HARILAL,
JUDGE.**

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P.Ato Judge