

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

Crl.Rev.Pet.No. 621 of 2015 ()

**AGAINST THE JUDGMENT IN CRA 573/2008 OF ADDITIONAL SESSIONS COURT-II,
THALASSERY DATED 25.09.2014**

**AGAINST THE JUDGMENT IN STC 940/2006 of JUDICIAL FIRST CLASS MAGISTRATE
COURT, THALASSERY DATED 05.12.2008**

REVISION PETITIONER(S)/APPELLANT/ACCUSED :

**K.M.MOHAMMED FIROZ, AGED 42 YEARS,
S/O. ABOOBACKER, 'FABINAS' NEAR PONNIAM CAFE,
CHIRAKKARA, THALASSERY, KANNUR**

BY ADV. SRI.CIBI THOMAS

RESPONDENT(S)/COMPLAINANT&STATE :

- 1. KAYANADATH MUHAMMED NIZAR
S/O.USMAN, KAYANADATH HOUSE, THIRUVANGAD,
THALASEERY, KANNUR DISTRICT-670 101.**
- 2. STATE OF KARALA
REP: BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM 682 031.**

R2 BY SRI.JIBU P. THOMAS, PUBLIC PROSECUTOR

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 27-05-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:**

AMV

K.HARILAL, J.

.....
Crl.R.P.No. 621 of 2015

.....
Dated this the 27th 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.573 of 2008 on the files of the court of the Judicial First Class Magistrate Court, Thalassery. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in STC No.940 of 2006 on the files of the Judicial First Class Magistrate's Court, Thalassery. 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.2,50,000/- as compensation under Section 357(3) of the Cr.P.C. In default of payment of compensation, the appellant/accused shall

undergo simple imprisonment for a period of six 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/1st 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 1st respondent.

So also, it is found that the debt due to the 1st respondent was a legally enforceable debt and Ext.P2 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 compensation of Rs.2,50,000/- (Rupees Two lakhs fifty thousand only) to the 1st respondent/complainant, under Section 357 (3) 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.2,50,000/-.
- 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