

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYASHTA, 1937

Crl.Rev.Pet.No. 627 of 2015 ()

**AGAINST THE JUDGMENT IN CRA 64/2011 of ADDL.SESIONS COURT (ADHOC-II)
KASARAGODE DATED 02-06-2012**

**AGAINST THE JUDGMENT IN CC 177/2010 of JUDICIAL FIRST CLASS MAGISTRATE-II,
(ADDITIONAL MUNSIFF), KASARAGOD DATED 07.02.2011**

REVISION PETITIONER(S)/APPELLANT/ACCUSED :-:

**SAYYED SAYNNULLAH ABID THANGAL, AGED 33 YEARS,
S/O.SAYYED ABOOBACKER THANGAL, P.O.ADHUR,
KASARAGOD DISTRICT.**

BY ADV. SRI.A.ARUNKUMAR

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE :-:

- 1. THE KASARAGOD PRIMARY CO-OPERATIVE AGRICULTURAL AND
RURAL BANK, MULLERIYA BRANCH, KASARAGOD TALUK,
KASARGOD DISTRICT, REPRESENTED BY ITS MANAGER,
K.P.JAYARAJAN, AGED 53 YEARS,
S/O.KUNHIRAMAN NAIR.**
- 2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**

**R1 BY ADV. SRI.T.SETHUMADHAVAN (SR.)
R1 BY ADV. SRI.PUSHPARAJAN KODOTH
R1 BY ADV. SRI.K.JAYESH MOHANKUMAR
R1 BY ADV. SMT.VANDANA MENON
R2 BY SRI.JIBU P. THOMAS, PUBLIC PROSECUTOR**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 25-05-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

AMV

K.HARILAL, J.

.....
Crl.R.P.No. 627 of 2015 ()

.....
Dated this the 25th 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.64 of 2011 on the files of the court of the Additional District and Sessions Court (Adhoc)-II, Kasaragod. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in C.C.No.177 of 2010 on the files of the Judicial First Class Magistrate-II, (Additional Munsiff), Kasaragod. According to the impugned judgment, the conviction and sentence passed by the trial court are confirmed, the revision petitioner was sentenced to undergo simple imprisonment till rising of the court and to pay to the complainant Rs.99,456/- as compensation under Section.357(3) of Cr.P.C., and in default of payment of which, the revision petitioner shall undergo simple

imprisonment for a period of two 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/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.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 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. He shall pay a compensation of Rs.99,456/- (Rupees Ninety nine thousand four hundred and fifty six 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 26.10.2015 with sufficient proof to show payment of Rs.99,456/-.
- 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/27/05/

/TRUE COPY/

P.A.TO JUDGE