

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 1937

Crl.Rev.Pet.No.641 of 2015

**Crl.A NO.482/2013 of ADDITIONAL DISTRICT AND SESSIONS COURT - IV,
THIRUVANANTHAPURAM.**

**ST NO.822/2008 of ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT,
THIRUVANANTHAPURAM .**

..

REVISION PETITIONER/IST RESPONDENT/COMPLAINANT:

**SHOBHA K.C,T.C 81/1627,B.N.37,
PONGUMOODU,THIRUVANANTHAPURAM.**

BY ADV.SMT. SHOBHA K.C. (PARTY-IN-PERSON)

RESPONDENT'S/APPELLANT/ACCUSED:

- 1. SUJA KOSHY,FALT NO.209,BLOCK C,PANDITS COLONY,
KOWDIAR,THIRUVANANTHAPURAM - 695 003.**
- 2. STATE OF KERALA,REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM-682031.**

**R1 BY ADV.SRI.G.SUDHEER
R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.**

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 06-07-2015, ALONG WITH Crl.R.P NO.803/2015 THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:**

pk

K.HARILAL, J.

Cr1.R.P. Nos.641 & 803 of 2015

Dated this the 6th day of July, 2015.

O R D E R

These revision petitions are filed challenging the legality, propriety and correctness of the findings in the judgment passed by the Additional District & Sessions Court-VI, Thiruvananthapuram in Cr1.Appeal No.482/2013 whereby the conviction entered against the revision petitioner in Cr1.R.P.No.803 of 2015/accused in S.T.No.822/2008 on the files of the Additional Chief Judicial Magistrate's Court, Thiruvananthapuram is confirmed and sentence is modified. Cr1.R.P.No.641/2015 is filed by the complainant challenging the inadequacy of sentence imposed by the appellate court and Cr1.R.P.No.803/2015 is filed challenging the concurrent findings of conviction and sentence on merits. The parties are referred to as in the complaint. The accused was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act'). The accused entered appearance and pleaded not guilty and thereafter faced the trial.

After considering the evidence on record, the trial court found the accused guilty of the said offence and convicted thereunder. She was sentenced to undergo simple imprisonment for a period of three months and to pay a fine of Rs.1,30,000/- for the offence punishable under Section 138 of the N.I.Act. In default of payment of fine, she shall undergo simple imprisonment for one month. If the fine amount is realised, the same shall be given to the complainant as compensation under Section 357(1)(b) of the Cr.P.C. Though the accused preferred the above criminal appeal, after re-appreciating the evidence on record, the learned Sessions Judge also concurred with the findings of conviction, but modified the sentence. The substantive sentence of simple imprisonment for 3 months was reduced and modified to simple imprisonment for one day till rising of the court. But the quantum of fine was enhanced to Rs.1,75,000/- and sustained the default sentence as such.

2. The learned counsel for the revision petitioner in CrI.R.P.No.803/2015 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 her.

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 Sections 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.Pl 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 expressed the revision petitioner's readiness and willingness to pay the fine amount; but sought for some time to pay the fine as she is unable to raise the said amount forthwith due to paucity of funds.

6. Per contra, the learned counsel for the revision petitioner in Crl.R.P.No.641/2015 submits that the sentence imposed on the revision petitioner is inadequate and the court below failed to consider the fact that the original transaction is of the year 2008 and the complainant is entitled to get huge amount by

way of interest. The learned counsel submits that the accused was given sufficient time to pay off the debt. But at last, the learned counsel submits that a reasonable time alone can be given to the accused. It is also contended that the complainant is entitled to get 18% interest also, in view of the decision in *Vijayan v. Baby* [2011(4) KLT 355].

7. 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.

8. In the light of the above decisions, I find that some modification can be made in the sentence, protecting the interest of both parties.

9. Having regard to the submissions made by both counsel at the bar and considering the willingness expressed by the learned counsel for the revision petitioner/accused in Crl.R.P.No.803/2015 to pay the fine payable as compensation within a specified time, I am inclined to grant three months time to pay the fine amount provided that the default sentence will stand enhanced to six months. Consequently, the sentence imposed on the accused/revision petitioner in Crl.R.P.No.803/2015 by the trial court and modified by the appellate will stand further modified as given below:

- i. The accused shall undergo simple imprisonment for one day till rising of the court.
- ii. She shall pay a fine of Rs.1,75,000/- (Rupees One lakh seventy five thousand only) with 9% interest from today within a period of three months from today to the complainant, under Section 357(3) of the Cr.P.C.
- iii. She shall appear before the Trial Court to suffer the substantive sentence of simple

imprisonment as ordered above on or before 6/10/2015 with sufficient proof to show payment of fine.

- iv. In default, she shall undergo simple imprisonment for a period of six months.
- v. The accused shall be released forthwith, if she is undergoing imprisonment in execution of the impugned sentence under challenge. It is made clear that if the accused fails to comply with the aforesaid conditions, the trial court shall initiate steps to execute the default sentence forthwith.

The Criminal revision petitions are disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.