

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

Cr1.Rev.Pet.No. 644 of 2015 ()

CRL.A 520/2013 of ADDL. SESSIONS COURT - V, KOZHIKODE
CC 71/2010 of SPL.J.M.F.C. FOR TRIAL OF MARAD CASES, KOZHIKODE

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REVISION PETITIONER(S)/APPELLANT/ACCUSED:

SHEEJA C.

W/O.REJI P.N, PINDAMNEEKIYIL HOUSE, KANNADIPOYIL P.O.,
BALUSSERY VIA, KOZHIKODE.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENT(S)/COMPLAINANT & STATE:

1. DON BOSCO,
S/O.HILLARIOUS, ULLAS NAGAR HOUSING COLONY,
KUTHIRAVATTOM P.O., KOZHIKODE 673 016.

2. STATE OF KERALA REP: BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM 682031.

R2 BY PUBLIC PROSECUTOR SMT.MADHU BEN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 29-05-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

OKB

K.HARILAL, J.

Cr1.R.P. No.644 of 2015

Dated this the 29th day of May, 2015.

O R D E R

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.520/2013 on the files of the court of the V Additional Sessions Judge, Kozhikode. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in C.C.No.71/2010 on the files of the Special Judicial First Class Magistrate's Court (Marad Cases), Kozhikode. According to the judgment of the trial court, the revision petitioner was sentenced to undergo simple imprisonment for one month and to pay to the

complainant Rs.2,16,770/- as compensation under Section 357(3) of the Cr.P.C. and in default to undergo simple imprisonment for two months. The appeal was dismissed confirming the conviction and sentence passed by the trial court.

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. 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.

3. 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 the 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.

4. 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.

5. Similarly, the substantive sentence imposed on the revision petitioner is too harsh and excessive. The learned counsel for the revision petitioner prayed for setting aside the sentence of imprisonment also. If the revision petitioner is incarcerated for a period as ordered by the courts below, the entire family will be put in great hardship.

6. The Supreme Court, in the decision in Kaushalya Devi Massand Vs. 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 submissions made at the Bar, expressing willingness to pay the compensation, I am inclined to grant six months time to pay the compensation. Similarly, the substantive sentence of imprisonment is reduced and modified to simple imprisonment for one day till rising of the court. Consequently, this revision petition is liable to be disposed of subject to the following terms:

- i. The revision petitioner shall undergo simple imprisonment for one day till rising of the court.
- ii. She shall pay a compensation of Rs.2,16,770/-

(Rupees Two lakhs sixteen thousand seven hundred and seventy only) to the 1st respondent/ complainant, under Section 357 (3) of the Cr.P.C., within a period of six months from today.

iii. She 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 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

okb.