

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

Crl.Rev.Pet.No. 647 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 763/2010 of ADDITIONAL
DISTRICT & SESSIONS COURT (ADHOC), PALAKKAD DATED
16-11-2012

AGAINST THE JUDGMENT IN CC 794/2009 of J.M.F.C.-III,
PALAKKAD DATED 17-12-2010

REVISION PETITIONER(S):

MRS. P.U.NOORJAHAN, AGED 44 YEARS,
W/O.SUHARURDHAAN, 29/513, MEPPARAMBA,
ERAYAPOTTA, PIRAYIRI, PALAKKAD.

BY ADV. SMT.K.K.JYOTHILAKSHMY

RESPONDENT(S):

1. MUTHOOT LEASING AND FINANCING COMPANY LTD.,
A COMPANY INCORPORATED UNDER THE COMPANIES ACT,
1956 AND HAVING ITS REGISTERED OFFICE AT MUTHOOT
CHAMBERS,
2ND FLOOR, OPPOSITE SARITHA THEATRE COMPLEX,
BANERGEER ROAD ERNAKULAM, COCHIN HAVING BRANCHES
ALL OVER THE KERALA AND ONE OF ITS OFFICE IS
AT 1ST FLOOR,
A.V.PLAZA, R.S.ROAD PALAKKAD,
NOW KNOWN AS MUTHOOT VEHICLE AND ASSET
FINANCE LTD., REPRESENTED BY C.S.MANJU,
W/O.KARTHIKEYAN, AGED 34 YEARS,
ASST.MANAGER AS AUTHORISED SIGNATORY AND GENERAL
POWER OF ATTORNEY HOLDER-688 001.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM. 682 031.

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JOSEPH

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 29-05-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.647 of 2015

Dated this the 29th 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.763 of 2010 on the files of the Sessions Judge, Palakkad. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.794 of 2009 on the files of the Judicial First Class Magistrate's Court-III, Palakkad. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for one

month and she is directed to pay a fine of Rs.2,16,975/- (cheque amount + 9% interest for 42 months). In default, to undergo simple imprisonment for another three months. Fine, if realised, shall be given to the complainant as compensation under Sec.357(1) of the 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 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. 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 Sec.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 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 one month time to pay the compensation. The substantive sentence of simple imprisonment for one month will stand reduced and modified to simple imprisonment for one day till rising of the court. Consequently, the revision petitioner will stand sentenced as follows:

i. The Revision Petitioner shall undergo simple imprisonment for one day till rising of the court.

ii. The Revision Petitioner shall pay the compensation under Sec.357(3) of the Cr.P.C. as ordered by the appellate court to the complainant within a period of one month from today.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 29/6/2015 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)

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P.S. to Judge