

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. 648 of 2015 (E1)

AGAINST THE JUDGMENT IN CRL.A 221/2000 of V ADDL. SESSIONS
COURT, ERNAKULAM DATED 31-03-2001

AGAINST THE JUDGMENT IN CC 1313/1998 of JUDL.M.F.C.-I,
ERNAKULAM DATED 28-04-2000

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REVISION PETITIONER(S)/APPELLANTS/ACCUSED 1 AND 2:

1. M/S.GLADSTON AGENCIES (I) (P) LTD.,
ITTIAR CHAMBERS, VEEKSHANAM ROAD, ERNAKULAM,
REPRESENTED BY IT'S MANAGING DIRECTOR V.C.MARKOSE.

2. V.C.MARKOSE,
S/O.IYPE CHERIAN, MANDELIL HOUSE, VAZHAKKALA,
KAKKANAD (WEST), KOCHI.

BY ADV. SRI.C.P.UDAYABHANU

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. M/S.CHANDAN METAL PRODUCTS (P) LTD.,
GORWA ROAD, VADODARA, GUJARAT,
REPRESENTED BY ITS MARKETING OFFICER, S.V.SINGH.

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

R1 BY ADV. SRI.S.R.DAYANANDA PRABHU

R1 BY ADV. SRI.K.S.RAJESH

R2 BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB

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.648 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 petitioners for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act') in Criminal Appeal No.221/2000 on the files of the court of the V Additional Sessions Judge, Ernakulam. The above appeal was filed challenging the judgment finding that the revision petitioners are guilty of the said offence, passed in C.C.No.1313/1998 on the files of the Judicial First Class Magistrate's Court-I, Ernakulam. According to the impugned judgment, the first revision petitioner was sentenced to pay only a fine of Rs.5,000/ and the second revision petitioner was

sentenced to undergo simple imprisonment for six months. If the fine amount is realised, Rs.2,000/- was ordered to be given to the complainant as compensation.

2.The learned counsel for the revision petitioners 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 petitioners 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 them.

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 petitioners 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 petitioners submits that the sentence imposed on the revision petitioners 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 entire fine amount as the first revision petitioner is unable to raise the said amount forthwith due to paucity of funds.

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

7. 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.

8. 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 entire fine, I am inclined to grant three months time to the first revision petitioner to pay the fine amount. Similarly, the substantive sentence of imprisonment imposed on the second revision petitioner is reduced and modified to simple imprisonment for one day till

rising of the court. Consequently, this revision petition will stand disposed of subject to the following terms:

- i. The first revision petitioner shall pay a fine of Rs.5,000/- (Rupees Five thousand only), within a period of three months from today. Out of the fine amount, Rs.2,000/- (Rupees Two thousand only) shall be given to the 1st respondent/complainant as compensation.
- ii. The second revision petitioner shall undergo simple imprisonment for one day till rising of the court.
- iii. The revision petitioners shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 31/8/2015 with sufficient proof to show payment of fine.

The Criminal revision petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.