

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

Cr1.Rev.Pet.No. 657 of 2015  
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AGAINST THE JUDGMENT IN CRL.A.NO. 19/2001 of ADDITIONAL  
DISTRICT AND SESSIONS COURT (ADHOC-I), KOZHIKODE DATED  
03-03-2003

AGAINST THE ORDER/JUDGMENT IN CC 306/1999 of J.M.F.C.-I,  
THAMARASSERY DATED 19-12-2000

REVISION PETITIONER(S)/APPELLANT/ACCUSED:  
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JOSEPH MATHEW, S/O. MATHEW,  
THANNIKKAL HOUSE, RETD. HEADMASTER,  
INAGAPUZHA AMSOM,  
KOZHIKODE TALUK.

BY ADV. SRI.GEORGE THOMAS RAMAPURAM

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:  
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1. STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM-682 031.
2. SADIQUE RAHMAN K.M., S/O. MUHAMMED,  
KARINTHOTTUKANDI HOUSE, RAROTH AMSOM AND DESOM,  
KOZHIKODE TALUK.

R1 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING COME UP  
FOR ADMISSION ON 08-06-2015, THE COURT ON THE SAME DAY  
PASSED THE FOLLOWING:

**K. HARILAL, J.**

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**Crl.R.P. No.657 of 2015**  
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**Dated this the 8<sup>th</sup> day of June, 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.19 of 2001 on the files of the Additional District & Sessions Judge, Fast Track (Ad hoc-I), 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.306 of 1999 on the files of the Judicial First Class Magistrate's Court-I, Thamarassery. According to

the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for a period of three months and to pay a fine of ₹5,000/-. In default, the accused shall undergo simple imprisonment for a further period of one month. The accused is further directed to pay ₹50,000/- as compensation to the complainant under Sec.357(3) of the Cr.P.C.

2. The case of the complainant is that the accused, who is the Managing Partner of one jewellery shop and previously known to him, obtained a personal loan of ₹1,00,000/- from him on 25/11/1998 agreeing to re-pay the amount within two months and in discharge of the said debt, the accused had issued a post dated cheque dated 25/1/1999 in favour of the complainant. When the said cheque was presented for encashment, the same was dishonoured and returned for want of sufficient funds. When the accused was questioned under Sec.313 of the Cr.P.C.,

he stated that the complaint was filed misusing a blank signed cheque which was given as security to one Thomas Master. But no defence evidence was adduced to substantiate the said contention. Though the accused had stated in evidence that the complainant is a total stranger to him, he has not chosen to issue any reply to Ext.P3 statutory notice issued under Sec.138 of the N.I. Act. This is a strong circumstance where the contentions raised in defence lack bona fides. The legal position is well settled in the decision reported in *Mulammootil Consumer Credit Ltd., v. Sreenivasan* [2006 (4) KLT 543]. This Court held that mere suggestions in the cross-examination or mere versions in Sec.313 of the Cr.P.C. are not sufficient to rebut the presumption under Secs.139 and 118(a) of the N.I. Act. In *Ranjappa v. Mohan* [2010 (2) KLT 682 (SC)], the Apex Court held that the presumption mandated under Sec.139 of the Indian Penal Code includes the existence of a legally

enforceable debt or liability. If that be so, mere suggestion or defence plea in Sec.313 Cr.P.C. is of no consequence at all. There is no illegality or impropriety in the findings whereby the court below rejected the appeal.

3. The Revision Petitioner reiterated the contentions which were raised before the courts below and got rejected concurrently. The revision petitioner 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/2<sup>nd</sup> 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 2<sup>nd</sup> respondent. So also, it is found that the debt due to the 2<sup>nd</sup> respondent was a legally enforceable debt and Ext.P1 cheque was duly executed and issued in discharge of the said debt. 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. The Revision Petitioner contended that challenge under this Revision is confined to sentence only. The sentence imposed on the Revision Petitioner is disproportionate with the gravity and nature of the offence. He further submits that the Revision Petitioner is willing to pay the compensation as ordered by the court below; but he is unable to raise the said amount forthwith due to paucity of funds. But he is ready to pay the compensation within two

months.

6. Similarly, the substantive sentence imposed on the revision petitioner is too harsh and excessive. 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 put put in great hardship.

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 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, I am inclined to grant two months time to pay the compensation. In supersession of the sentence imposed by the trial court and modified by the appellate court, 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 Rs.50,000/- (Rupees Fifty thousand only) to the 2<sup>nd</sup> respondent as compensation under Sec.357(3) of the Cr.P.C. within a period of two months 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 10/8/2015 with sufficient proof to show payment of compensation.

iv. In default, the Revision Petitioner shall undergo simple imprisonment for a period of one month.

The Criminal Revision Petition is disposed of accordingly.

**Sd/-**

**(K. HARILAL, JUDGE)**

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P.S. to Judge