

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

Crl.Rev.Pet.No. 667 of 2015 ()

AGAINST THE JUDGMENT IN CRL.A 393/2011 of I ADDL. SESSIONS
COURT, THIRUVANANTHAPURAM DATED 20-12-2014

AGAINST THE JUDGMENT IN ST 2075/2007 of J.M.F.C.-II,
THIRUVANANTHAPURAM DATED 23-06-2011

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REVISION PETITIONER(S)/APPELLANT/ACCUSED:

MANOJ THOMAS, AGED 50 YEARS,
S/O.J.P.THOMAS, DILSHANOJ HOUSE NO.15, JAWAHAR NAGAR,
KOWDIYAR, THIRUVANANTHAPURAM.

BY ADV. SRI.IEANS.C.CHAMAKKALA

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

1. TOM GEORGE, AGED 47 YEARS,
S/O.C.V.GEORGE, CLIFFY VALLEY, D-7,
T.C.4/1453, KURAVANKONAM.P.O., KOWDIYAR,
THIRUVANANTHAPURAM.695 003.

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

R1 BY ADV. SRI.S.V.RAJAN
R1 BY ADV. SRI.R.SUDHISH
R1 BY ADV. SMT.M.MANJU
R1 BY ADV. SRI.R.SANTHOSH (VARKALA)
R1 BY ADV. SRI.C.P.JAGADESH
R1 BY ADV. SMT.JYOTHI ABRAHAM
R2 BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 04-06-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

OKB

K.HARILAL, J.

Cr1.R.P. No.667 of 2015

Dated this the 4th day of June, 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.393/2011 on the files of the court of the I Additional Sessions Judge, Thiruvananthapuram. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in S.T.No.2075/2007 on the files of the Judicial First Class Magistrate's Court-II, Thiruvananthapuram. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for three months and to pay a fine of Rs.5 lakhs, payable in its entirety to the complainant as compensation under Section 357(1)(b) of the Cr.P.C.

and in default to undergo simple imprisonment for one month.

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 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.P7 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 sought for some time to pay the fine as he is unable to raise the said amount forthwith due to paucity of funds, if this revision is found meritless.

6. 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.

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. 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 six

months time to pay the fine. Similarly, the substantive sentence of imprisonment for 3 months 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 revision petitioner shall undergo simple imprisonment for one day till rising of the court.
- ii. The revision petitioner shall pay a fine of Rs.5,00,000/- (Rupees Five lakhs only) within a period of six months from today and the same shall be given to the 1st respondent/complainant as compensation under Section 357(1)(b) of Cr.P.C.
- iii. The revision petitioner shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 5/12/2015 with sufficient proof to show payment of fine.
- 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

okb.