

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

Crl.Rev.Pet.No. 695 of 2015 (E1)

AGAINST THE JUDGMENT IN CRL.A 167/2001 of SESSIONS COURT,
KOTTAYAM DATED 13-11-2002

AGAINST THE JUDGMENT IN CC 408/1998 of J.F.C.M.COURT-III,
KOTTAYAM DATED 06-04-2001

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REVISION PETITIONER(S)/APPELLANT/ACCUSED:

SHAJI JOSEPH, AGED 43 YEARS,
S/O.C.C.JOSEPH, CHITTAKKATTIL HOUSE, KURAVILANGADU,
KOTTAYAM.

BY ADVS.SRI.C.A.CHACKO
SMT.C.M.CHARISMA

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. M/S. VIKAS HIRE PURCHASE COMPANY PVT. LTD.,
KANNAMPURAM BUILDING, KOTTAYAM,
A COMPANY INCORPORATED UNDER THE COMPANIES ACT,
REPRESENTED BY ITS PRINCIPAL OFFICER
AND AUTHORIZED REPRESENTATIVE,
M.RADHAKRISHNAN, GENERAL MANAGER.

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

R1 BY ADV. SRI.G.SREEKUMAR (CHELUR)
R2 BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 08-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Cr1.R.P. No.695 of 2015

Dated this the 8th 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.167/2001 on the files of the court of Sessions Judge, Kottayam. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in C.C.No.408/1998 on the files of the Judicial First Class Magistrate's Court-III, Kottayam. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for three months only.

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 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 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.

6. Similarly, the substantive sentence imposed on the revision petitioner is too harsh and excessive. The learned counsel for the revision petitioner urged for reducing the substantive sentence of simple imprisonment for three months imposed on the revision petitioner in view of the decisions laid down by the Apex Court as regards the nature and gravity of

the offence under Section 138 of the N.I. Act.

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. In supersession of the sentence imposed by the trial court and modified by the appellate court, the substantive sentence of simple imprisonment for three months will stand reduced and modified to simple imprisonment for one day till rising of the court provided that the revision petitioner will pay

enhanced compensation of Rs.70,000/- to the 1st respondent within a period of three months from today. Consequently, the revision petitioner will stand sentenced as follows:

1. The revision petitioner shall undergo simple imprisonment for one day till rising of the court.
2. He shall pay an enhanced compensation of Rs.70,000/- (Rupees Seventy thousand only) to the 1st respondent/complainant within three months from today.
3. He shall appear before the trial court to suffer the substantive sentence of simple imprisonment as ordered above on or before 09/9/2015 with sufficient proof to show payment of compensation.
4. In default, he shall undergo simple imprisonment for two months.

The Criminal revision petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.