

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

Crl.Rev.Pet.No. 697 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 176/2014 of II
ADDITIONAL SESSIONS COURT, ERNAKULAM DATED 11-03-2015.

AGAINST THE JUDGMENT IN CC 4547/2010 of J.M.F.C.-II,
ERNAKULAM DATED 29-01-2014.

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

SUNI K.A., AGED 33 YEARS,
S/O.K.M.ABDUL KAREEM, KAVUNGAL HOUSE,
KANJIRAMATTAM PO,- 682 315,
AND DOING BUSINESS IN THE NAME AND ADDRESS
SUNITRONICS, 1ST FLOOR,
AMEEN CHAMBERS, ELECTRONICS STREET,
KARIMPATTA CROSS ROAD, PALLIMUKKU.

BY ADV. SRI.BIJU ABRAHAM

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. P.M.PADMANABHAN,
S/O.MADHAVAN NAIR, "DHANUSREE",
(MANGATTU KALATHIL VEETIL), RAMANKARATHA ROAD,
CHERANALLORR PO, 682 034.

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

R2 BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 10-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.697 of 2015

Dated this the 10th 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.176 of 2014 on the files of the Sessions Judge, The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.4547 of 2010 on the files of the Judicial First Class Magistrate's Court-II, Ernakulam. According to the impugned judgment, the Revision Petitioner is sentenced to simple imprisonment for one month and

topay a fine of ₹23,000/- which the cheque amount along with interest at the rate of 9% per annum from the date of the complaint till realisation to the complaint under Sec.357(3) of the Cr.P.C. In default of payment of compensation, the accused shall undergo simple imprisonment for a further period of two months.

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. 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.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.

3. The counsel for the Revision Petitioner submits 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 three months.

4. 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 put in great hardship.

5. 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.

6. 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 within three months, I am inclined to grant three months time to pay the compensation. In view of the above decisions of the Apex Court, I find that the substantive sentence of simple imprisonment for one month is a little excessive and the same will stand reduced and modified to simple imprisonment for one day till rising of the court. Consequently, the revision petitioner will stand convicted and 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.23,000/- (Rupees Twenty three thousand only) with interest at the rate of 9% per annum from the date of complaint till realisation to the 1st respondent/complainant as compensation under Sec.357(3) of the Cr.P.C. within a period of three 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 10/9/2015 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