

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

Cr1.Rev.Pet.No. 716 of 2015  
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AGAINST THE JUDGMENT IN CRL.A.NO. 134/2014 of I  
ADDITIONAL SESSIONS JUDGE, KOLLAM DATED 13-03-2015

AGAINST THE JUDGMENT IN ST 2651/2011 of J.M.F.C.-I,  
KOTTARAKKARA DATED 01-04-2014

REVISION PETITIONER(S)/APPELLANT/ACCUSED:  
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BIJU JOHN,S/O. JOHN, KUNNATHU VEEDU,  
CHAIRATTAKKONAM MURI,  
PANAVELI P.O., VALAKOM VILLAGE, KOLLAM.

BY ADV. SRI.AJAYA KUMAR. G

RESPONDENT(S)/RESPONDENTS/STATE:  
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1. STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA,  
ERNAKULAM-682 031.
2. SHEEN GEORGE,  
VENKALAKADAYIL AGENCIES,  
VENUS JUNCTION, KOTTARAKKARA VILLAGE,  
KOLLAM.

R1 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING COME UP  
FOR ADMISSION ON 22-06-2015, THE COURT ON THE SAME DAY  
PASSED THE FOLLOWING:

**K. HARILAL, J.**

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**Crl.R.P. No.716 of 2015**  
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**Dated this the 22<sup>nd</sup> day of June, 2015**

**ORDER**

Heard the learned counsel for the 2<sup>nd</sup> respondent.

2. 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.134 of 2014 on the files of the I Additional Sessions Judge, Kollam. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T.No.2651 of 2011 on the files of the Judicial First Class Magistrate's Court-I, Kottarakara. According to the impugned judgment, the Revision

Petitioner is sentenced to undergo simple imprisonment for one month and to pay a compensation of ₹2 lakhs to the complainant 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 three 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/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.

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 five 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 five months, I am inclined to grant five months time to pay the compensation. Similarly, the substantive sentence of imprisonment is reduced and modified to simple imprisonment for one day till rising of the court. In supersession of the sentence imposed by the trial court and confirmed by the appellate court, the revision petitioner will stand convicted 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.2,00,000/- (Rupees Two lakhs only) to the 2<sup>nd</sup> respondent within a period of five months from today as compensation under Sec.357(3) of the Cr.P.C.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 23/11/2015 with sufficient proof to show payment of compensation.

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

The Criminal Revision Petition is disposed of accordingly.

Sd/-  
**(K. HARILAL, JUDGE)**

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P.S. to Judge

