

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

Crl.Rev.Pet.No. 742 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 172/2012 of II
ADDITIONAL DISTRICT AND SESSIONS COURT, KALPETTA DATED
13-08-2014

AGAINST THE JUDGMENT IN ST 2396/2011 of J.M.F.C.-I,
SULTHAN BATHERY DATED 06-10-2012

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

VISWAMBHARAN T.K., AGED 57 YEARS,
S/O. KUMARAN, THUNDIYIL HOUSE, PULPALLY POST,
SULTHAN BATHERY, WAYANAD DISTRICT.

BY ADVS.SRI.AMJAD ALI
SRI.MANSOOR.B.H.

RESPONDENT(S)/STATE & COMPLAIANANT:

1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM - 682 031.

2. M/S. SREE GOKULAM CHITS AND FINANCE
COMPANY (PO) LTD.,
KIZHAKBAGATH COMPLEX, SULTHAN BATHERY,
REPRESENTED BY ITS AUTHORISED REPRESENTATIVE
SRI.SUNIL K.N., AGED 36 YEARS,
S/O. NARAYANAN, KADAMCHIRAYIL (H), MYLAMBADI P.O.,
PURAKKADI APPAT, SULTHAN BATHERY,
WAYANAD DISTRICT.

R2 BY ADV. SRI.K.S.BABU

R2 BY ADV. SMT.N.SUDHA

R1 BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 23-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.742 of 2015

Dated this the 23rd day of June, 2015

ORDER

Heard the learned counsel for the revision petitioner and the learned counsel for the 2nd respondent.

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.172 of 2012 on the files of the Additional District and Sessions Judge-II, Kalpetta. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T.No.2396 of 2011 on the files of

the Judicial First Class Magistrate's Court-I, Sulthan Bathery. According to the impugned judgment, the Revision Petitioner is sentenced to undergo imprisonment till rising of the court and he is further sentenced to pay a compensation of ₹1,57,000/- 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 6 months for the offence punishable under Sec.138 of the N.I. Act.

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/2nd 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 2nd respondent. So also, it is found that the debt due to the 2nd respondent was a legally enforceable debt and Ext.P1 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. 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 Sec.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. 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.

7. 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, I am inclined to grant five months time to pay the compensation. 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 ₹1,57,000/- (Rupees One lakh and fifty seven thousand only) within a period of five months from today to the 2nd respondent 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