

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. 743 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 345/2009 of SESSIONS
COURT, KOTTAYAM DATED 7/1/2010.

AGAINST THE JUDGMENT IN ST 50/2007 of J.M.F.C.III,
KANJIRAPPALLY DATED 20/7/2009.

REVISION PETITIONER(S) APPELLANT/ACCUSED:

LIJU JOSE, S/O. M.P. JOSE, MOONKELY HOUSE,
NORTH PARAVOOR (PO),
NORTH PARAVOOR, ERNAKULAM DISTRICT.

BY ADVS.SRI.ANIL K.MOHAMMED
SRI.V.S.MANSOOR

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. THOMAS JOSEPH, PARAMPIL HOUSE,
KUNNUMBHAGOM, K.K. ROAD, KANJIRAPPLY (PO),
KANJIRAPPALLY-682 337.
2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.

R2 BY PUBLIC PROSECUTOR SRI. JUSTIN 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. 743 of 2015

Dated this the 23rd day of June, 2015

ORDER

Though notice had been duly served on the 1st respondent/complainant, he has not chosen to enter appearance to contest this revision petition on merits.

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.345 of 2009 on the files of the Sessions Judge, Kottayam. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T.C.No.50 of 2007 on the files of the Judicial First

Class Magistrate's Court-III, Kanjirappally. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for one year for the offence under Sec.138 of the N.I. Act and to pay a compensation of ₹7 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.

3. 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 six 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 six months, I am inclined to grant six 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 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.7,00,000/- (Rupees Seven lakhs only) to the 1st respondent as compensation within

a period of six months from today under Sec.357(3) of the Cr.P.C. If he had deposited any amount, the same shall be given credit to and the balance alone needs to be paid as compensation to the complainant. In that event, the complainant is allowed to realise such deposit, if any.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 22/12/2015 with sufficient proof to show payment of compensation or such deposit, if any.

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

