

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

Crl.Rev.Pet.No. 749 of 2015 (E1)

AGAINST THE JUDGMENT IN CRL.A 297/2013 of SESSIONS COURT,
THIRUVANANTHAPURAM DATED 16-06-2014
AGAINST THE JUDGMENT IN ST 23/2012 of J.M.F.C.-III, NEDUMANGAD
DATED 27-06-2013

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REVISION PETITIONER/APPELLANT/ACCUSED:

J.DIVAKARAN, AGED 51 YEARS,
SUDHI BHAVAN,
KARIMKUTTYKAVE (P.O.),
MELATTUMOOZHY.

BY ADVS.SRI.R.BINDU (SASTHAMANGALAM)
SRI.PRASANTH M.P

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. THE GENERAL MANAGER,
THIRUVANANTHAPURAM DISTRICT CO-OPERATIVE BANK LIMITED,
REPRESENTED BY ITS BRANCH MANAGER,
THIRUVANANTHAPURAM DISTRICT CO-OPERATIVE BANK LIMITED,
KALLARA, PIN-695001.
2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.

R2 BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS
R1 BY SRI.T.R.HARIKUMAR,SC, THIRUVANANTHAPURAM DISTRICT
CO-OPERATIVE BANK LIMITED

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 19-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Cr1.R.P. No.749 of 2015

Dated this the 19th 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.297/2013 on the files of the court of the Sessions Judge, Thiruvananthapuram. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in S.T.No.23/2012 on the files of the Judicial First Class Magistrate's Court-III, Nedumangad. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for two months and to pay a fine of Rs.32,500/-, which, if realised, shall be given to the complainant as compensation under Section 357 of the Cr.P.C. and in default to undergo simple imprisonment

for one month.

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.Pl 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 fine as he is unable to raise the said amount forthwith due to paucity of funds, if this revision petition is found meritless.

6. 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 be put in great hardship.

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. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, I am inclined to grant

three months time to pay the fine. Similarly, the substantive sentence of imprisonment for two months is reduced and modified to simple imprisonment for one day till rising of the court. Consequently, this 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 a fine of Rs.32,500/- (Rupees Thirty two thousand only) within a period of three months from today and the same shall be given to the 1st respondent/complainant as compensation under Section 357(1)(b) of the Cr.P.C.
- iii. The revision petitioner shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 19/9/2015 with sufficient proof to show payment of fine.
- iv. In default, the revision petitioner shall undergo simple imprisonment for a period of one month.

The Criminal revision petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.