

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

Crl.Rev.Pet.No. 752 of 2015 (E1)

AGAINST THE JUDGMENT IN CRL.A 429/2013 of I ADDL.SESIONS
COURT,KOTTAYAM DATED 19-12-2014

AGAINST THE JUDGMENT IN ST 58/2013 of J.M.F.C-III,
KANJIRAPPALLY DATED 16-11-2013

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

SEENATH JALEEL
W/O JALEEL, MALIYETH THUNDIYIL, MUNDAKAYAM P.O.
MUNDAKAYAM VILLAGE, KOTTAYAM DISTRICT.

BY ADVS.SRI.RAJESH NAIR
SRI.BIJOY CHANDRAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE:

1. JAYESH P.J.
S/O JANARDHANAN, PUTHENPURACKAL, KUPPAKKAYAM P.O.
KOMPUKUTHY, KOTTAYAM DISTRICT, PIN:686001.

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN:682031.

R1 BY ADV. SRI.SANTHARAM.P
R1 BY ADV. SMT.REKHA ARAVIND
R2 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:

OKB

K.HARILAL, J.

Cr1.R.P. No.752 of 2015

Dated this the 22nd 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.429/2013 on the files of the court of the I Additional Sessions Judge, Kottayam Division. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in S.T.No.58/2013 on the files of the Judicial First Class Magistrate's Court-III, Kanjirappally. According to the impugned judgment, the revision petitioner was sentenced only to pay a fine of Rs.3,00,000/- and in default of payment of fine, to undergo simple imprisonment for one month. If the fine amount is realised, the same shall

be paid to the complainant as compensation under Section 357(1) of the Cr.P.C.

2. Heard the learned counsel for the revision petitioner and the learned counsel for the 1st respondent. 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 her.

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 the 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 she 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 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.

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, the revision petitioner is given six months time to pay the fine. Consequently, in modification of the modified sentence imposed by the appellate court, the revision petitioner will stand sentenced as follows:

- i. The revision petitioner shall pay a fine of

Rs.3,00,000/- (Rupees Three lakhs only) within a period of six 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.

ii. In default, she shall undergo simple imprisonment for a period of one month.

iii. Warrant pending in execution of the sentence imposed on the revision petitioner under the impugned judgment shall be kept in abeyance for a period of six months from today.

The Criminal revision petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.