

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. 756 of 2015

AGAINST THE ORDER/JUDGMENT IN CRL.A.NO. 490/2009 of I
ADDITIONAL SESSIONS COURT, THALASSERY DATED 12-09-2013

AGAINST THE JUDGMENT IN STC.NO. 414/2008 of ADDITIONAL
CHIEF JUDICIAL MAGISTRATE'S COURT, THALASSERY DATED
08-10-2009

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

RAGESH, AGED 40 YEARS,
S/O.C.P.NANU, CHAMBLON HOUSE, NEAR KUNDACHALIL,
PATTIAM P.O., MADAPPURA, PATHAYAKKUNNU,
THALASSERY TALUK, KANNUR DISTRICT.

BY ADVS.SRI.P.K.VARGHESE
SRI.P.P.BIJU

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

1. MANOJKUMAR, AGED 40 YEARS,
S/O.KUNHIKANNAN, KAKKADAN HOUSE,
VALLIYAYI P.O.THALASSERY, KANNUR DISTRICT-673 638.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM-682 031.

R2 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 22-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No. 756 of 2015

Dated this the 22nd day of June, 2015

ORDER

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.490 of 2009 on the files of the I Additional Sessions Judge, Thalassery. 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.414 of 2008 on the files of the Additional Chief Judicial Magistrate's Court, Thalassery. According to the impugned judgment, the Revision Petitioner is sentenced to simple imprisonment for one

day till rising of the court and to pay a fine of ₹25,000/-. In default, to undergo simple imprisonment for 15 days. If the fine amount is realised, the same shall be given to the complainant under Sec.357(1) of the Cr.P.C.

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 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.

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 the submission made at the Bar, expressing willingness to undergo the substantive sentence of

imprisonment for one day till rising of the court and to pay the compensation within a period of one week from today, I am inclined to grant one week's 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 a fine of ₹25,000/- (Rupees Twenty five thousand only) within a period of one week from today and the same shall be given to the 1st respondent as compensation under Sec.357(1) 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 30/6/2015 with sufficient proof to show payment of compensation.

iv. In default, the Revision Petitioner shall undergo simple imprisonment for a

period of one month.

v. Warrant, in execution of the sentence, shall be kept in abeyance up to 30/6/2015.

The Criminal Revision Petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge