

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

Cr1.Rev.Pet.No. 769 of 2015

Cr1.A 241/2009 of SESSIONS COURT, KASARAGOD DATED 23-11-2010

CC 148/2009 of J.M.F.C.-II, KASARAGOD DATED 09-10-2009

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

MOHAMMED HANEEF @ ANU
S/O.IBRAHIM, M.K.HOUSE, K.G.M. ROAD
MANJESWAR P.O., MANJESHWAR, KASARAGOD.

BY ADV. SRI.K.PRAVEEN KUMAR

RESPONDENT(S)/RESPONDENT/COMPLAINANT & STATE:

1. PUNDALIKA NAIK
S/O.RAMA NAIK, NEAR SAT HIGH SCHOOL, GUDDEKERI HOSUE
HOABETTU VILLAGE P.O., MANJESHWAR, KASARAGOD-673 121.

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

R1 BY ADV. SRI.V.A.VINOD
R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 23-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No. 769 of 2015

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Dated this the 23rd day of June, 2015

ORDER

The revision petitioner is the accused in C.C.No.148/2009 on the files of the Judicial First Class Magistrate's Court -II, Kasaragod as well as the appellant in Criminal Appeal No.241/2009 on the files of the Court of Session, Kasaragod. He was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act, on a complaint filed by the 1st respondent herein. After trial, the learned Magistrate found the revision petitioner guilty of the said offence and he was convicted thereunder. He was sentenced to undergo simple imprisonment for 10 days and to pay a compensation of 90,000/- to the complainant under Section 357(3) of the Code of Criminal Procedure. In default, to undergo simple imprisonment for two months. Though he had preferred the above appeal

challenging the conviction and sentence, the Appellate Court also concurred with the verdict of guilty and confirmed the sentence as such without any interference. This revision petition is filed challenging the legality and propriety of the concurrent findings of the courts below.

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

3. Though this revision petition is filed on various grounds, challenging the concurrent findings of conviction and sentence, the learned counsel for the revision petitioner submits that in compliance with the direction in the judgment passed in appeal, the revision petitioner has paid the entire compensation to the 1st respondent, though belatedly. The learned counsel for the 1st respondent submits that, as submitted by the learned counsel for the revision petitioner, the 1st respondent has received the entire amount directed to be paid as compensation and now he has no subsisting grievance at all. The learned counsel for the

revision petitioner further urged for reducing the substantive sentence of imprisonment in view of the payment of compensation to the complainant.

4. 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.

5. In view of the above decisions and the payment of compensation, though belatedly, I find that the substantive sentence of simple imprisonment for 10 days can be

reduced to simple imprisonment for one day till rising of the court.

6. In the result, in supersession of the sentence imposed by the Trial Court and confirmed as such by the Appellate Court, the substantive sentence of simple imprisonment for 10 days will stand reduced to simple imprisonment for one day till rising of the court only. The petitioner shall appear before the court below on or before 22/07/2015 to suffer substantive sentence of simple imprisonment for one day till rising of the court.

The revision petition is disposed of.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge