

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

Cr1.Rev.Pet.No. 774 of 2015 ()

AGAINST THE JUDGMENT IN CRL.A 460/2012 of ADDL.DISTRICT &
SESSIONS COURT - IV, THIRUVANANTHAPURAM DATED 28-2-2015

AGAINST THE JUDGMENT IN ST 2367/2007 of J.M.F.C.-II,
THIRUVANANTHAPURAM DATED 13-9-2012

REVISION PETITIONER/APPELLANT/ACCUSED:

P.ALAGAR,
S/O. PALANI, QUARTER NO. 116 C, RAILWAY QUARTERS,
THAMPANOR P.O, THIRUVANANTHAPURAM.

BY ADVS.SRI.K.J.SAJI ISAAC
DR.ELIZABETH VARKEY

RESPONDENT(S)/RESPONDENTS/STATE & COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.

2. M/S. THIRUVANANTHAPURAM REPRESENTATIVES AND
SALES MAN CO-OPERATIVE SOCIETY LTD, T.1662,
AIRPORT ROAD, FORT P.O., THIRUVANANTHAPURAM-695001
REPRESENTED BY ITS SECRETARY N.VISWANATHAN.

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 24-06-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

OKB

K.HARILAL, J.

Cr1.R.P. No.774 of 2015

Dated this the 24th 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.460/2012 on the files of the court of the IV Additional District & 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.2367/2007 on the files of the Judicial First Class Magistrate's Court-II, Thiruvananthapuram. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for one day till rising of the court and to pay an amount of Rs.60,128/-, together with interest @ 9% per annum

from 23.10.2007 till realisation, as compensation to the complainant under Section 357(3) of the Cr.P.C. and in default to undergo simple imprisonment for three months.

2. Learned counsel for the revision petitioner mainly canvassed the point that according to the averments in the complaint, the accused is a loanee, who has availed the loan. But, in evidence, it has come out that the revision petitioner is a surety to the transaction, not loanee and the loanee is none other than the son of the revision petitioner. Going by the impugned judgment, it is seen that this contention was raised before the appellate court and the appellate court has considered the point elaborately. As rightly held by the court below, I also find that merely on the reason that there is an interchange of status of the petitioner, that does not make any difficulties in the rights and liabilities of the revision petitioner. As observed by the court below, as per Section 128 of the Indian Contract Act, the liability of a surety is co-extensive with that of the principal debtor. There is

no illegality or impropriety in any of the findings of the court below and I do not find any kind of perversity in the appreciation of evidence.

3. At last, the learned counsel sought for some time to pay the compensation, if this Court finds that the revision petition is not admissible on the files under revisional jurisdiction.

3. 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.

4. In this analysis, I concur with the findings of the court below and the said contention would stand rejected. 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. He shall pay a compensation of Rs.60,128/- (Rupees Sixty thousand one hundred and only) with 9% interest to the 2nd respondent/complainant within a period of five months from today under Section 357(3) of the Cr.P.C.
- iii. He shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 24/11/2015 with sufficient proof to show payment of compensation.
- iv. In default, he shall undergo simple imprisonment for a period of three months.

The Criminal revision petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.