

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

Crl.Rev.Pet.No.823 of 2015 ()

**AGAINST THE JUDGMENT IN CRL.A 264/2007 of SESSIONS COURT,
THODUPUZHA DATED 18-04-2009**

**AGAINST THE JUDGMENT IN ST 28/2007 of J.M.F.C.-II,THODUPUZHA
DATED 07-08-2007**

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REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**M.T.VINODKUMAR,
S/O THANKAPPAN PILLAI,
MULLUPARAMBIL HOUSE,
ALAKODE VILLAGE,
THODUPUZHA
IDUKKI DISTRICT.**

BY ADV. SRI.ANIL GEORGE

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

- 1. SIVADASAN PILLAI,
S/O NARAYANA PILLAI,
URUMBANAL HOUSE,
KODIKULAM KARA,
KODIKULAM VILLAGE,
THODUPUZHA TALUK, IDUKKI DISTRICT.**
- 2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

**R1 BY MATHEWS K UTHUPACHAN
R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 03-07-2015, ALONG WITH CRRP NO.824/2015, THE COURT ON THE SAME
DAY PASSED THE FOLLOWING:**

VS

K.HARILAL, J

Crl.R.P.Nos.823 &824 of 2015

Dated this the 3rd day of July, 2015

ORDER

The petitioner/accused and respondent/complainant are same in these two revision petitions; the matter in issue as well as the facts involved in the revision petitions are also same. Therefore, these revision petitions are heard together and disposed of by this common order.

2. The Crl.R.P.No.823 of 2015 is filed, challenging the findings of conviction and sentence imposed on the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to the 'Act' for short) in S.T.No.28/2007 on the files of Judicial First Class Magistrate Court-II, Thodupuzha and confirmed in Crl.Appeal.No.264/2007 on the files of the Court of Sessions Judge, Thodupuzha.

3. Crl.R.P.No.824 of 2015 is filed against the findings of conviction and sentence imposed on the petitioner in S.T.No.29/2007 on the files of Judicial First Class Magistrate Court-II, Thodupuzha and confirmed in an

appeal in Crl.Appeal.No.265/2007 on the files of the Court of Sessions Judge, Thodupuzha.

4. In both cases, now the revision petitioner stands convicted to undergo simple imprisonment for a period of six months each and to pay a compensation of Rs.4,50,000/- each to the complainant under Sec.357(3) of the Cr.P.C. and in default, to undergo simple imprisonment for a further period of three months each.

5. The learned counsel for the petitioner submits that though, these revision petitions have been filed challenging the legality and propriety of the concurrent findings of conviction and sentence on various grounds, after the passing of the judgment in appeal, the petitioner has paid the entire amount directed to be paid as compensation to the complainant/respondent in both the cases and now no amount is due from the petitioner/accused to the complainant/respondent under the impugned judgments.

6. The learned counsel for the respondent agrees

with the said submission and submitted that as rightly submitted by the learned counsel for the petitioner, after the pronouncement of the judgment in appeal, the respondent has received the entire amount directed to be paid as compensation in both cases and now he has no subsisting grievances at all and he does not intend to proceed against the revision petitioner/accused.

7. In view of the payment of compensation, the learned counsel for the petitioner prayed for reducing the substantive sentence of simple imprisonment for 6 months each imposed on the revision petitioner. The learned counsel for the respondent submitted that respondent has no objection in modifying the substantive sentence of imprisonment in view of the payment of compensation.

8. The Supreme Court, in the decision in **Kaushalya Devi Massand Vs. 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.

9. In view of the prepositions laid down by the Apex Court in the above decisions, I find that consequent on payment of compensation, substantive sentence of simple imprisonment for 6 months imposed on the revision petitioner/accused in both cases can be reduced to simple imprisonment for one day till rising of the court. Consequently, in supersession of the sentence imposed by the courts below concurrently this revision petitioner is sentenced as follows:

- i. The revision petitioner shall undergo simple

imprisonment for one day till rising of the court.

ii. He shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 03.08.2015.

The Criminal Revision Petitions are disposed of accordingly.

Sd/-

**K.HARILAL
JUDGE**

VS

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PA.. to Judge