

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. 829 of 2015 ()

**AGAINST THE JUDGMENT IN CRA 95/2005 of SESSIONS COURT,KOTTAYAM
DATED 10-04-2006**

IN CC 865/2004 of J.M.F.C.-II(MOBILE),KOTTAYAM DATED 15-01-2005

REVISION PETITIONER(S)/APPELLANT/ACCUSED :

**THOMAS CHACKO, AGED 50 YEARS
S/O CHACKO, KORATHARA HOUSE, KANNADI
PULINKUNNU, ALAPPUZHA, (VEMBANADU MODERN RICE MILL
KAINADY, KUTTANADU, ALAPPUZHA).**

**BY ADVS.SRI.R.SUDHISH
SMT.M.MANJU**

RESPONDENT(S)/COMPLAINANT AND STATE :

- 1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.**
- 2. KUMARAKOM SERVICE CO-OPERATIVE BANK LIMITED NO.2298,
KUMARAKOM, KOTTAYAM DISTRICT
REPRESENTED BY ITS SECRETARY K.V.MATHEW.**

BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
03-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VS

K.HARILAL, J

Crl.R.P.No.829 of 2015

Dated this the 3rd day of July, 2015

ORDER

The revision petitioner is the appellant in C.C.No.865/2004 on the files of Judicial First Class Magistrate Court -II, Kottayam as well as the appellant in Crl.Appeal.No.95/2005 on the files of Judicial First Class Magistrate Court-II (Mobile), Kottayam and the respondents herein are the respondents in the above cases.

2. The petitioner was prosecuted for the offence punishable under Sec.138 of the Negotiable Instruments Act and convicted thereunder. He is sentenced to undergo simple imprisonment for one year and to pay a compensation of Rs.2,50,000/- to the complainant and in default, to undergo simple imprisonment for further four months.

3. Though this revision petition has been filed,

challenging the concurrent findings of conviction and sentence on merits. The learned counsel for the petitioner submits that after the passing of judgment in appeal, the petitioner had paid the entire amount directed to be paid as compensation to the complainant and at present, no amount is due from him under the impugned judgment under challenge. The learned counsel for the respondents also submits that the respondent has received the entire amount directed to be paid as compensation from the petitioner and at present, no amount is due from him and the respondent does not intend to proceed against the petitioner.

4. In view of the payment of compensation, the learned counsel for the petitioner prayed for modifying the substantive sentence of simple imprisonment also.

5. 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.

6. In the light of the decisions referred above, I find that the substantive sentence of simple imprisonment for one year can be modified to simple imprisonment for one day till rising of the court. Consequently, in supersession of the sentence imposed by the courts below concurrently, the revision petitioner will stand sentenced as follows:

i. The revision petitioner shall undergo simple imprisonment for one day till rising of the court within a period of one month from today.

ii. He shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 10.08.2015. It is made clear that the default sentence will not come into operation.

The Criminal Revision Petition is disposed of accordingly.

**K.HARILAL
JUDGE**

VS