

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

Crl.Rev.Pet.No. 843 of 2015 (A1)

AGAINST THE JUDGMENT IN CRL.A 553/2012 of ADDL. DISTRICT &
SESSIONS COURT - II, N.PARAVUR DATED 20-5-2015

AGAINST THE JUDGMENT IN ST 5044/2008 of J.M.F.C.-II, N.PARAVUR
DATED 27-7-2012

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REVISION PETITIONER/APPELLANT/ACCUSED :

ANTONY P.T. AGED 64 YEARS
S/O. THOMMAN, PALLIPARAMBIL HOUSE, PALLIPURAM KARA,
KUZHUPPILLY VILLAGE, KOCHI TALUK.

BY ADVS.SRI.K.S.RAJEEV (ALUVA)
SMT.DHANYA MOHAN

RESPONDENTS/RESPONDENTS/COMPLAINANT/STATE :

1. RAJEEV V.V.
S/O. VASU, VALATHU HOUSE, CHETTIKKAD,
KUNJITHAI, PIN-682 048.

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

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 09-07-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

OKB

K.HARILAL, J.

Cr1.R.P. No.843 of 2015

Dated this the 9th day of July, 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.553/2012 on the files of the court of the II Additional District & Sessions Judge, N.Paravur. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in S.T.No.5044/2008 on the files of the Judicial First Class Magistrate's Court-II, N.Paravur. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for one month and to pay a fine of Rs.1,20,000/- and in default of payment of fine, he shall undergo simple imprisonment for one

month. If the fine is remitted, the same shall be paid to the complainant as compensation under Section 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 the 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.Pl 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 the appreciation of evidence, from which the above findings had been arrived at. 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 Section 138 of the N.I. Act. The learned counsel further sought for some time to pay the fine as he is unable to raise the said amount forthwith due to paucity of funds, if this revision petition is found liable to be dismissed.

6. Similarly, the substantive sentence imposed on

the revision petitioner is too harsh and excessive. The learned counsel for the revision petitioner prayed for setting aside the sentence of imprisonment also. If the revision petitioner is incarcerated for a period as ordered by the courts below, the entire family will be put in great hardship.

7. 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.

8. Having regard to the nature and gravity of the

offence and in the light of the decisions quoted above, the revision petitioner is given five months time to pay the fine amount. Similarly, the substantive sentence of imprisonment for one month will stand reduced and modified to simple imprisonment for one day till rising of the court. Consequently, in supersession of the sentence imposed by the trial court and modified by the appellate court, the revision petitioner will stand sentenced as follows:

- i. The revision petitioner shall undergo simple imprisonment for one day till rising of the court. If he had already undergone imprisonment, in execution of the sentence imposed under the impugned judgment, he need not undergo further incarceration. He shall be released forthwith, if his custody is not required in any other case.
- ii. He shall pay a fine of Rs.1,20,000/- (Rupees One lakh and twenty thousand only) within a period of five months from today and the same shall be given to the complainant as compensation under Section 357(1)(b) of the Cr.P.C.
- iii. In default, he shall undergo simple imprisonment for one month.

This criminal revision petition is disposed of.

Sd/-
K. HARILAL, JUDGE

okb.