

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

Crl.Rev.Pet.No. 850 of 2015 ()

AGAINST THE JUDGMENT IN CRL.A 395/2010 of ADDL.SESIONS
COURT -IV, KOLLAM DATED 25-07-2014

AGAINST THE JUDGMENT IN ST 295/2008 of C.J.M.COURT,KOLLAM
DATED 30-08-2010

REVISION PETITIONER/APPELLANT/ACCUSED:

NAVAS, AGED 42 YEARS,
S/O.NADHEER, NAVAS MANZIL, KANDACHIRA,
PERINAD P.O., KOLLAM DISTRICT.

BY ADV. SRI.VINOY VARGHESE KALLUMMOOTIL

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

1. S.JAMEELA BEEVI,
S.J. HOUSE, CANTONMENT NORTH, KOLLAM-691001.

2. THE STATE OF KERALA
REP BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682031.

R1 BY ADV. SRI.C.RAJENDRAN

R1 BY ADV. SRI.K.R.RANJITH

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 08-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Cr1.R.P. No.850 of 2015

Dated this the 8th 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.395/2010 on the files of the court of the IV Additional Sessions Judge, Kollam. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in S.T.No.295/2008 on the files of the Chief Judicial Magistrate's Court, Kollam. 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 a fine of Rs.1,65,000/- and in default to undergo

simple imprisonment for three months. If the fine amount is realised, 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. 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.

7. Having regard to the nature and gravity of the offence and in the light of the decisions quoted above, the revision petitioner is given six months time to pay the fine. 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 fine of Rs.1,65,000/-(Rupees One lakh and sixty five thousand only) within a period of six months from today and the same shall be given to the 1st respondent/complainant under Section 357(1) (b) 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 08.01.2016 with sufficient proof to show payment of fine.
- 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.