

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. 851 of 2015 ()

AGAINST THE JUDGMENT IN CRL.A 131/2012 of I ADDL. SESSIONS
COURT, KALPETTA, WAYANAD DATED 10-07-2014

AGAINST THE JUDGMENT IN STC 380/2011 of J.M.F.C, MANANTHAVADY
DATED 18-06-2012

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REVISION PETITIONER/APPELLANT/ACCUSED:

K. MANOJ, AGED 45 YEARS, S/O.SREEDHARAN,
ANIYARIMAMMU QUARTERS, NEAR ANJUKUNNU MOSQUE,
ANJUKUNNU P.O., MANANTHAVADY TALUK,
WAYANAD DISTRICT.

BY ADV. SRI.V.SHYAM

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. SURENDRANADHAN UNNITHAN, AGED 62 YEARS,
S/O.RAGHAVAN UNNITHAN, VINEETH HOUSE,
ANJUKUNNU P.O., MANANTHAVADY TALUK, WAYANAD DISTRICT.
2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.D.SREENATH

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.851 of 2015

Dated this the 8th day of July, 2015.

O R D E R

Revision petitioner is the accused in S.T.C.No.380/2011 on the files of the Judicial First Class Magistrate's Court-I, Mananthavady as well as the appellant in Cr1. A. No.131/2012 on the files of the I Additional Sessions Court, Sessions Division, Kalpetta, Wayanad. He was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act') and convicted and sentenced thereunder. He was sentenced to undergo simple imprisonment for one month and to pay an amount of Rs.26,000/- to the complainant as compensation under Section 357(3) of the Cr.P.C. In default of payment of compensation, he shall undergo simple imprisonment for three months. Though he had preferred the above appeal, the appellate court also confirmed the conviction and sentence as such,

without any interference. The legality and propriety of the concurrent findings of conviction and sentence are under challenge in this revision petition.

2. Though this revision petition is filed on various grounds, challenging the concurrent findings of conviction and sentence, the learned counsel for the revision petitioner Sri.V.Shyam submits that after the pronouncement of the judgment in appeal, the revision petitioner had paid the entire amount directed to be paid as compensation to the complainant and at present no amount is due from him to the complainant. The learned counsel for the first respondent Sri. D. Sreenath submits that, as submitted by the learned counsel for the revision petitioner, after the pronouncement of the judgment in appeal, the first respondent has received from the revision petitioner the entire amount directed to be paid as compensation and now no amount is due from him and he has no subsisting grievance at all. In view of the payment of compensation, the learned counsel for the revision petitioner urged for reducing the substantive sentence

of simple imprisonment imposed on the revision petitioner. The learned counsel further submits that the revision petitioner had already undergone simple imprisonment for a period of one month in execution of the sentence imposed on him under the impugned judgment.

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 view of the above decisions, I find that the

sentence imposed on the revision petitioner deserves to be set aside and sentence has to be imposed in view of the above decisions.

Consequently, the revision petitioner will stand sentenced to undergo simple imprisonment for one day till the rising of the court only. But, considering the fact that the revision petitioner had already undergone simple imprisonment for one month, he need not undergo further imprisonment for one day. He shall be released forthwith, if his custody is not required in any other case.

This criminal revision petition is disposed of.

Sd/-
K. HARILAL, JUDGE

okb.