

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

Cr1.Rev.Pet.No. 854 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 129/2001 of ADDITIONAL
SESSIONS-I, KALPETTA DATED 20-02-2015

AGAINST THE JUDGMENT IN CC 763/2001 of J.M.F.C.-II,
MANANTHAVADY DATED 30-10-2001

REVISION PETITIONER/APPELLANT/ACCUSED:

O.G. JANARDHANAN, S/O. GOVINDAN,
ODAKKAL HOUSE, THRISSILERY P.O.,
KARITHULAM VIA, MMANANTHAVADY.

BY ADV. SMT.CELINE JOSEPH

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

1. KANAKARAJAN, S/O. ANANDASWAMI,
NADUKKALATHIL HOUSE, THRISSILERY P.O.,
KARTHIKULAM VIA, MANANTHAVADY-673 121.
2. STATER OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM-682 031.

R1 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 15-07-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No. 854 of 2015

Dated this the 15th day of July, 2015

ORDER

The revision petitioner is the accused in C.C.No.763 of 2001 on the files of the Judicial First Class Magistrate's Court-II, Mananthavady, as well as the appellant in Crl. Appeal No.129 of 2001 on the files of the Additional Sessions Judge-I, Kalpetta, Wayanad. He was prosecuted for the offence punishable under Sec.138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act'). After trial, the learned Magistrate found the revision petitioner guilty of the said offence and convicted thereunder. He was sentenced to undergo simple imprisonment for a period of one year. Though he preferred the above Criminal Appeal, the

appellate court also affirmed the verdict of guilty and confirmed the conviction; but modified the sentence. The substantive sentence was modified to a fine of ₹2,000/- with default sentence of simple imprisonment for one year and also to pay a compensation of ₹2,18,000/- with default sentence of simple imprisonment for three months. Aggrieved by the said judgment, the accused preferred Crl.R.P. No.2161 of 2004 before this Court and this Court, after examining the legality and propriety of the findings of conviction and sentence, confirmed the conviction; but set aside the sentence passed by this Court and remanded the matter to the appellate court with a direction to hear the accused and pass appropriate sentence in this matter in accordance with law.

2. In compliance with the direction of this Court, the appellate court again heard the question of sentence and passed the impugned order sentencing the revision petitioner to undergo simple imprisonment for one day till rising of the court and

also to pay a fine of ₹2,18,000/- and in default, to undergo simple imprisonment for three months. If the fine amount is realised, the entire amount shall be paid to the complainant as compensation. The legality and propriety of the sentence imposed by the appellate court are again brought up before this Court in this revision petition.

3. Heard the learned counsel for the revision petitioner.

4. Though the learned counsel for the revision petitioner advanced arguments challenging the illegality and propriety of the sentence imposed on the revision petitioner, I find that the learned Sessions Judge has considered the question of sentence in its correct perspective. The sentencing policy in a proceeding under Sec.138 of the N.I. Act has been considered by the Apex Court in various decisions.

5. 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 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 view of the above decisions, I find that the court below has imposed the sentence in conformity with the nature and gravity of the offence under Sec.138 of the N.I. Act laid down in the above decisions. There is no illegality or propriety in the findings whereby the court below sentenced the petitioner. In the absence of any illegality or impropriety or incorrectness, this Court is not inclined to admit the case under the revisional jurisdiction on

the files of this Court.

7. At last the learned counsel for the revision petitioner sought for some time to pay the fine amount. As held above, considering the nature and gravity of the offence, the petitioner is given three months time to pay the fine amount. 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. The Revision Petitioner shall pay a fine of ₹2,18,000/- (Rupees Two lakhs and eighteen thousand only) within a period of three months from today to the 1st respondent/complainant as compensation under Sec.357(1)(b) of the Cr.P.C.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 15/10/2015 with sufficient proof to show payment of

compensation.

iv. In default, the Revision Petitioner shall undergo simple imprisonment for a period of three months.

v. If he had deposited any amount in the trial court towards compensation or fine, the same shall be given credit to and the balance alone needs to be paid as compensation or fine, as the case may be, and in that event, the complainant is allowed to realise such deposit from the court.

The Criminal Revision Petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge