

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

Crl.Rev.Pet.No. 865 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 138/2011 of II
ADDITIONAL SESSIONS COURT, THIRUVANANTHAPURAM, DATED
26-08-2014

AGAINST THE JUDGMENT IN ST 580/2006 of JUDICIAL FIRST
CLASS MAGISTRATE'S COURT-II,VARKALA DATED 26-02-2011.

REVISION PETITIONERS/APPELLANTS/ACCUSED:

-
1. R.MOHANAN, IMPATHANJAZHIYIL,
KUNTHANDOOR, CHIRAYINKEEZH TALUK,
THIRUVANANTHAPURAM TALUK.
 2. M. RAGHAVAN,
THATTIKALLU LAKSHAM VEEDU,
THATTIKALLU, PERINKULAM, ATTINGAL,
THIRUVANANTHAPURAM DISTRICT.

BY ADVS.SRI.G.HARIHARAN
SRI.PRAVEEN.H.

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

-
1. DHARMARAJAN, AGED 67 YEARS,
S/O. NARAYANAN, MAMBAYAVILA,
PRALEYAGIRI, CHEMMARUTHI VILLAGE,
VARKALA, THIRUVANANTHAPURAM DISTRICT-695141.
 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.

R1 BY ADV. SRI.M.DINESH
R2 BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 13-07-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No. 865 of 2015

Dated this the 13th day of July, 2015

ORDER

This Revision Petition is filed challenging the concurrent findings of conviction entered and the sentence imposed on the Revision Petitioners for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act') in Criminal Appeal No.138 of 2011 on the files of the Additional Sessions Judge-II, Thiruvananthapuram. The above appeal was filed challenging the judgment finding that the Revision Petitioners are guilty of the said offence, passed in S.T.No.580 of 2006 on the files of the Judicial First Class Magistrate's Court-II, Varkala. According to the impugned judgment, the Revision Petitioners/2nd and 3rd accused are sentenced to

undergo simple imprisonment for one day till rising of the court. They are directed to pay a fine of ₹60,000/- each and the same is ordered to be paid to the complainant as compensation. In default, the revision petitioners shall undergo default imprisonment for a period of two months.

2. The learned counsel for the Revision Petitioners 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 Petitioners 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 them.

3. The courts below had concurrently found that the complainant/1st respondent had successfully

discharged 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.P1 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 appreciation of evidence, from which the above findings had been arrived. 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 Petitioners submits that the sentence imposed on the Revision Petitioners is disproportionate with the

gravity and nature of the offence contemplated under Sec.138 of the N.I. Act. The learned counsel further sought for some time to pay the compensation 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 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.

7. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar seeking time to pay compensation, I am inclined to grant four months time to pay the compensation. Consequently, this Revision Petition will stand disposed of subject to the following terms.

i. The Revision Petitioners shall undergo simple imprisonment for one day till rising of the court.

ii. The Revision Petitioners shall pay a fine of ₹60,000/- (Rupees Sixty thousand only) each within a period of four months from today and the same shall be given to the 1st respondent/complainant as compensation under Sec.357(1)(b) of the Cr.P.C.

iii. The Revision Petitioners shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered

above on or before 13/11/2015 with sufficient proof to show payment of compensation.

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

v. If the revision petitioner 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)

Nan/

//true copy//

P.S. to Judge