

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. 866 of 2015 ()

**CRA 130/2010 of III ADDL.DIST. & SESSIONS COURT, THODUPUZHA
ST 1247/2008 of JUDICIAL FIRST CLASS MAGISTRATE COURT - I, IDUKKI**

REVISION PETITIONER/APPELLANT/ACCUSED :

**ABDUL K. NAZAR, AGED 50 YEARS,
S/O.KHADER, BLOCK NO.393, KALLAR.P.O.,
THOOKKUPALAM, NEDUMKANDOM, PIN-685 552.**

BY ADV. SRI.S.DILEEP (KALLAR)

RESPONDENTS/COMPLAINANT/STATE :

- 1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. A.C.KURIAN
S/O.CHACKO, ERAMBAN KUDIYIL HOUSE, IDUKKI COLONY.P.O.
PAINAVU KARA, IDUKKI DISTRICT.**

**R1 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS
R2 BY ADV. SMT.SIJI BALAKRISHNAN**

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

bp

K.HARILAL, J.

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Crl.R.P.No.866 of 2015

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Dated this the 13th day of July, 2015

ORDER

The revision petitioner is the accused in S.T.No. 1247/2008 on the files of the Judicial First Class Magistrate's Court-I, Idukki as well as the appellant in Crl.Appeal No. 130/2010 on the files of the 3rd Additional District and Sessions Judge (Adhoc-I), Thodupuzha. He was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act on a complaint filed by the 2nd respondent herein. 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 six months and to pay a compensation of Rs.75,000/- to the complainant under Section 357(3) of the Cr.P.C. In default, to undergo simple imprisonment for one month. Though he had preferred the

above Crl. Appeal, the appellate court also confirmed the conviction but modified the sentence. The substantive sentence of simple imprisonment for six months was reduced and modified to simple imprisonment for one day till rising of the court and maintained the rest of 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. Heard the learned counsel for the petitioner and the learned counsel for the 2nd respondent. Though this revision petition has been filed on various grounds, challenging the concurrent findings of conviction and modified sentence, the learned counsel for the petitioner submits that the challenge under this revision petition is confined to sentence only. After passing of the impugned judgment under challenge, the revision petitioner had paid the entire amount directed to be paid as compensation to the 2nd respondent and now no amount is due from him to the 2nd respondent. The learned counsel for the 2nd respondent submits that the 2nd respondent has received

the entire amount directed to be paid as compensation and now he has no subsisting grievance at all and he does not intend to proceed against the petitioner. To prove the payment of compensation and the settlement arrived at between the parties, a compounding petition is also filed by the parties. In view of the payment of compensation, the learned counsel for the petitioner urged for modifying the substantive sentence of imprisonment also.

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 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.

4. In view of the nature and gravity of the offence under Section 138 of the Negotiable Instruments Act and the above referred decisions, I find that the substantive sentence of imprisonment imposed on the revision petitioner can be modified as prayed for by the learned counsel for the petitioner.

5. Consequently, in supersession of the sentence imposed by the trial court and confirmed by the appellate court, the revision petitioner will stand sentenced to undergo simple imprisonment for one day till rising of the Court only. He shall appear before the trial court to suffer substantive sentence as stated above within a period of one month from today. It is made clear that the default sentence will not come into operation.

The revision petition is disposed of.

Sd/-
K.HARILAL, JUDGE.

stu

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P.A to Judge