

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

Cr1.Rev.Pet.No. 883 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 46/2014 of ADDITIONAL
SESSIONS COURT (SPECIAL), KOTTAYAM DATED 23-04-2015

AGAINST THE JUDGMENT IN CC 41/2010 of J.M.F.C.,
ERATTUPETTA DATED 28-1-2014

REVISION PETITIONER/APPELLANT/ACCUSED:

SREEKALA, AGED 46 YEARS,
SR. AUDITOR, SAHAKARANA SANGAM,
ASST. REGISTRAR OFFICE,
C.K.MANI MEMORIAL BUILDING, NAGAMPADAM, KOTTAYAM,
W/O.KUMAR, ASWATHI HOUSE, MURIKKUMPUZHA,
PALA.

BY ADV. SRI.M.J.SANTHOSH

RESPONDENTS/RESPONDENTS/COMPLAINANTS:

1. P.J.JOSE, AGED 41 YEARS,
W/O.JOSEPH, PALACKAL HOUSE, PANACHIPARA KARA,
POONJAR NADU BHAGOM VILLAGE, KOTTAYAM-686581

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

R2 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 30-07-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.883 of 2015

Dated this the 30th day of July, 2015

ORDER

The revision petitioner is the accused in C.C. No.41 of 2010 on the files of the Judicial First Class Magistrate's Court, Erattupetta. He was prosecuted for the offence punishable under Sec.138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act') on a complaint filed by the 1st respondent. 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 three months and to pay a fine of ₹1,60,000/- and in default, to undergo simple

imprisonment for a further period of two months. If the fine is realised, it shall be paid as compensation to the complainant under Sec.357(1)(b) of the Cr.P.C.

2. Aggrieved by the conviction and sentence, the revision petitioner preferred Crl. Appeal No.46 of 2014 before the Additional Sessions Judge-II, (Special), Kottayam. In that appeal, at the time of hearing, the learned counsel for the petitioner submitted that the revision petitioner was willing to return the amount within four months and the learned counsel for the 1st respondent also submitted that the 1st respondent has no objection in granting four months time to the revision petitioner for making payment. In that context, the court below confirmed the conviction and modified the sentence directing the petitioner to undergo simple imprisonment for one day till rising of the court and to pay a fine of ₹1,60,000/- under Sec.138 of the N.I. Act and in default, to undergo simple imprisonment for two months. If the fine is realised, the same shall be paid to the complainant as

compensation under Sec.357(1)(b) of the Cr.P.C. This judgment passed in the Criminal Appeal is under challenge in this revision petition.

3. Going by the impugned judgment, it could be seen that the said judgment was passed on the basis of the consensus arrived at between the parties. Therefore, there is no need to consider the case on merits, even though several grounds are raised in this Memorandum of Criminal Revision Petition.

4. The learned counsel for the petitioner submits that this revision petition is filed mainly challenging the illegality in the sentence imposed by the courts below. According to the petitioner, the quantum of fine fixed by the court below is exorbitant, unreasonable and disproportionate with the nature and gravity of the offence under Sec.138 of the N.I. Act.

5. Going by the impugned judgment, it is seen that the cheque amount is ₹80,000/- only and the

court below directed to pay a fine of ₹1,60,000/-. It is true that under Sec.138 of the N.I. Act fine may extend to twice the amount of the cheque. When maximum amount of fine is imposed, it must be supported by sufficient reasoning. But no reason has been assigned to award the maximum amount as fine. In *Vijayan v. Baby* [2011 (4) KLT (SC)], the Apex Court held that the in a proceeding under Sec.138 of the Cr.P.C., if the accused is found guilty of the said offence and he is liable to pay compensation for the loss sustained by the complainant and the complainant is entitled to get interest at the rate of 9% per annum also for the cheque amount. In the light of the above decision, I am inclined to modify the sentence in conformity with the decision laid down by the Apex Court.

6. Consequently, in supersession of the sentence imposed by the trial court and confirmed by the appellate court, the revision petitioner will stand sentenced as follows:

- i. The Revision Petitioner shall

undergo simple imprisonment for one day till rising of the court.

ii. The Revision Petitioner shall pay a fine ₹80,000/- (Rupees Eighty thousand only) with interest at the rate of 9% per annum from the date of the complainant till realisation of the amount within a period of six months from today and the same shall be given to the 1st respondent/ complainant 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 29/01/2016 with sufficient proof to show payment of compensation.

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