

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

Crl.Rev.Pet.No. 884 of 2015 ()

AGAINST THE JUDGMENT IN CRL.A 201/2012 of ADDL.SESIONS COURT-III, KOZHIKODE DIVISION DATED 26-05-2012

AGAINST THE JUDGMENT IN ST 3135/2009 of J.F.C.M.COURT -I, KOZHIKODE DATED 29-02-2012

REVISION PETITIONER(S)/APPELLANT/ACCUSED :

SUMESH P.

O/O THE LAW OFFICE, COMMERCIAL TAX, CHEROOTTY ROAD, KOZHIKODE.

BY ADV. SRI.DENIZEN KOMATH

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. SALI AUGUSTINE,
W/O. AUGUSTINE, MATTATHINANIKKAL, AMBALAKKULANGARA,
MALAPARAMBA POST, KOZHIKODE-673009.

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 20-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Cr1.R.P. No.884 of 2015

Dated this the 20th day of July, 2015.

O R D E R

This revision petition is filed challenging the concurrent findings of conviction entered and the sentence imposed on the revision petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act') in Criminal Appeal No.201/12 on the files of the court of the III Additional Sessions Judge, Kozhikode Division. The above appeal was filed challenging the judgment finding that the revision petitioner is guilty of the said offence, passed in S.T.No.3135/09 on the files of the Judicial First Class Magistrate's Court-I, Kozhikode. According to the impugned judgment, the revision petitioner was sentenced to undergo simple imprisonment for one day till rising

of the court and to pay a fine of Rs.1,40,000/–, which, if realised, shall be paid to the complainant as compensation under Section 357(1) of the Cr.P.C. and in default to undergo simple imprisonment for three months.

2. The learned counsel for the revision petitioner 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 petitioner 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 him.

3. The courts below had concurrently found that the complainant/1st respondent had successfully discharged the 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.Pl 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 the appreciation of evidence, from which the above findings had been arrived at. 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 petitioner submits that the sentence imposed on the revision petitioner is disproportionate with the gravity and nature of the offence contemplated under Section 138 of the N.I. Act. The learned counsel further sought for some time to pay the fine as he is unable to raise the said amount forthwith due to paucity of funds, if this revision petition is found

meritless.

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 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.

7. Having regard to the nature and gravity of the offence and in the light of the decisions quoted above, the revision petitioner is given five months time to pay the fine. 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. He shall pay a fine of Rs.1,40,000/- (Rupees One lakh forty thousand only) within a period of five months from today and the same shall be given to the 1st respondent/complainant, as compensation under Section 357(1)(b) of the Cr.P.C.
- iii. He shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 20.12.2015 with sufficient proof to show payment of fine.
- iv. In default, he shall undergo simple imprisonment for a period of three months.

The Criminal revision petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.