

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

Crl.Rev.Pet.No. 913 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 622/2013 of ADDITIONAL
DISTRICT & SESSIONS COURT, MOOVATTUPUZHA.

AGAINST THE JUDGMENT IN CC 249/2009 of J.M.F.C. - II,
PERUMBAVOOR.

REVISION PETITIONER(S)/PETITIONER:

C.R.SIDHARTHAN, AGED 42 YEARS,
S/O.RAJAPPAN, CHALLIL HOUSE, AVOLY P O,
PIN-686677.

BY ADV. SRI.P.K.BABU

RESPONDENT/RESPONDENT/COMPLAINANTAND STATE:

1. M/S. GURUDEVA RICE AND AGRO PRODUCTS
PRIVATE LIMITED,
REPRESENTED BY ITS MANAGER, VINOD KUMAR V M.,
SREEMOOLANAGARAM, KALADY, ERNAKULAM-683581.

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

R2 BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 20-08-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.913 of 2015

Dated this the 20th day of August, 2015

ORDER

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.622 of 2013 on the files of the Additional District & Sessions Judge, Muvattupuzha. The above appeal was filed challenging the judgment whereby the Revision Petitioner was found guilty of the said offence, passed in C.C.No.249 of 2009 on the files of the Judicial First Class Magistrate's Court-II, Perumbavoor. According to the impugned judgment, the Revision Petitioner stands

sentenced to undergo simple imprisonment for one day till rising of the court and to pay an amount of ₹1,60,000/- to the complainant as compensation. In default, to undergo simple imprisonment for a period of five months. If the fine amount is realised, the same shall be given to the complainant as compensation under Sec.357(3) of the Cr.P.C.

2. The complainant's case is that the accused purchased rice from the complainant and towards the payment of the value, he has drawn and issued Exts.P2 and P2(a) cheques for ₹1,00,000/- and ₹60000/- respectively; but the same were dishonoured and returned for want of sufficient funds, when they were presented for encashment. To discharge the initial burden, the Manager of the Company was examined as P.W.1 and Exts.P1 to P7 were marked.

3. In defence, the accused contended that at the time of purchasing rice, blank signed cheques were issued as security; but no evidence had been adduced to substantiate the said contention. Even though

P.W.1 was cross-examined, nothing brought out to improbabilise the complainant's case or probabilise the defence contention. In that context, the court below is justified in finding that the accused has failed to rebut the presumptions under Secs.118(a) and 139 of the N.I. Act which stood in favour of the complainant.

4. 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.

5. 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 some time to pay the 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 Petitioner shall undergo simple imprisonment for one day till rising of the court.

ii. The Revision Petitioner shall pay ₹1,60,000/- (Rupees One lakhs and sixty thousand only) to the 1st respondent as compensation under Sec.357(3) of the Cr.P.C. within a period of four months from today.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 21/12/2015 with sufficient proof to show payment of

compensation.

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