

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

Crl.Rev.Pet.No. 923 of 2015 ()

CRL.A 368/2010 of I ADDL. SESSIONS JUDGE, KOLLAM

STC 28/2009 of J.M.F.C. - II, KARUNAGAPPALLY

REVISION PETITIONER/APPELLANT/ACCUSED:

SASI, AGED 41 YEARS
S/O.NARAYANAN, ERUTHILUVILA VADAKKATHIL
NORTH MYNAGAPPALLY, MYNAGAPPALLY VILLAGE
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.VINOY VARGHESE KALLUMMOOTTIL

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. MADHAVAN PILLAI, AGED 69 YEARS
S/O.NARAYANA PILLAI, LATHA BHAVAN, THENNALA
KALLELIBHAGOM MURI, KALLELIBHAGOM VILLAGE
PATHANAMTHITTA - 689 645.

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

R1 BY ADV. SRI.R.T.PRADEEP
R2 BY PUBLIC PROSECUTOR SRI.JIBU.P.THOMAS.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 24-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No.923 of 2015

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Dated this the 24th day of July, 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.368/2010 on the files of the I Additional Sessions Judge, Kollam. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T.C.No.28/2009 on the files of the Judicial First Class Magistrate's Court-II, Karunagappally. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for one day till rising of the court and to pay a fine of ₹ 2,60,000/-, which, on realisation, shall be given to the

complainant as compensation and in default, to undergo simple imprisonment for five months.

2. The complainant's case is that the accused borrowed an amount of ₹2,50,000/- from him and in discharge of the said amount, Ext.P1 cheque was issued and on presentation for encashment, the cheque was dishonoured and returned for want of sufficient funds. The complainant successfully proved the execution and issuance of the cheque. But, coming to rebuttal, no evidence either oral or documentary was produced. He denied the liability under the cheque by putting bare suggestions to the complaint when he was cross examined. But nothing brought out to discredit the evidence of the complainant. In this analysis, the courts below are justified in finding that the accused failed to rebut the presumption, which stood in favour of the complainant.

3. 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.

4. 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.

5. 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.

6. 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 sometime to pay the fine if this revision is found meritless as he is unable to raise the said amount forthwith due to paucity of funds.

7. 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.

8. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, I am inclined to grant 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. The Revision Petitioner shall pay a fine of Rs.2,60,000/- (Rupees Two lakhs Sixty 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. If the petitioner had deposited any amount in the trial court in

compliance with the interim order of this Court or appellate court, the same shall be given credit to and the balance alone needs to be paid as fine.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 25th December, 2015 with sufficient proof to show payment of fine.

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

The Criminal Revision Petition is disposed of accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge