

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

Crl.Rev.Pet.No. 945 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 177/2009 of ADDITIONAL
SESSIONS COURT-IV, THALASSERY DATED 30-09-2014

AGAINST THE JUDGMENT IN ST 432/2007 of ADDITIONAL
C.J.M. COURT, THALASSERY DATED 24/3/2009

REVISION PETITIONER/APPELLANT/ACCUSED:

AMEER OTTAKKANDATHI, AGED 34 YEARS,
S/O KHADER O.K., RESIDING AT SUKRIYA MAHAL,
MUZHAPPILANGAD AMSOM DESOM, P.O., MUZHAPPILANGAD,
KANNUR DISTRICT.

BY ADVS.SRI.P.M.SATHEESH
SRI.R.GIREESH VARMA

RESPONDENTS/RESPONDENTS/COMPLAINANT AND STATE:

1. MUJEEB. M., AGED 34 YEARS,
S/O MOIDEENKUTTY, RESIDING AT MANAYATH HOSUE,
TRIPPANGOTTUR AMSOM DESOM, P.O., KADAVATTUR,
KANNUR DIST.

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

R1 BY ADV. SRI.G.S.KRISHNAN KARTHA
ADV. SRI.LIJIN THAMBAN
ADV. SRI.M.RETHEESHKUMAR

R2 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 04-08-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.945 of 2015

Dated this the 4th 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.177 of 2009 on the files of the IV Additional Sessions Judge, Thalassery. The above appeal was filed challenging the judgment whereby the Revision Petitioner was found guilty of the said offence, passed in C.C.No.432 of 2007 on the files of the Judicial First Class Magistrate's Court, Thalassery. According to the impugned judgment, the Revision Petitioner stands sentenced to undergo

simple imprisonment till rising of the court and to pay a fine of ₹2 lakhs and in default, to undergo simple imprisonment for a further period of three months. If the fine amount is realised, it shall be given to the complainant under Sec.357(1) of the Cr.P.C.

2. The complainant's case is that the accused borrowed an amount of ₹2 lakhs from him and in discharge of the said liability, the accused drew and issued a cheque for the said amount in favour of the complainant. When the said cheque was presented for encashment, the same was dishonoured and returned for want of sufficient funds.

3. In defence, the defence case put forward by the accused is that he had borrowed an amount of ₹5,000/- lakhs from one T.K. Muhammad and at that time, he issued a blank signed cheque to him as security. Even though he repaid the said amount to the said Muhammad, he did not return the cheque given by him and misutilised the same and falsely

instituted the present prosecution against him. Though he had raised such a defence contention, no evidence, either oral or documentary, had been adduced to substantiate the said contention. So also, he has miserably failed to rebut the presumptions under Secs.118(a) and 139 of the the N.I. Act which stood in favour of the complainant.

4. 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.

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 Sec.138 of the N.I. Act. The learned counsel further sought for some time to pay the compensation, if this revision is found meritless, as he is unable to raise the said amount forthwith due to paucity of funds.

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 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.

7. 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 six 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 a fine of ₹2,00,000/- (Rupees Two lakhs only) within a period of six months from today and the same shall be given to the 1st respondent/complainant as compensation 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 4/2/2016 with sufficient proof to show payment of compensation.

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