

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. 947 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 71/2012 of ADDITIONAL
SESSIONS COURT - III, MANJERI DATED 16-08-2014

AGAINST THE JUDGMENT IN CC 467/2009 of J.M.F.C.-I,
PERINTHALMANNA DATED 24-1-2012

REVISION PETITIONER:

ALI EDAYERATH, S/O. EDAYERATH KUNHAPPA,
THENKARA P.O., MANNARKKAD,
PALAKKAD DISTRICT.

BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA

RESPONDENTS/ACCUSED AND STATE:

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM-682 031.
2. E.P. HARIS, S/O. ERUPALLIYELIL ABU,
ERASSERI HOUSE, PARAL P.O.,
THOOTHATHA, MALAPPURAM DISTRICT-670 671.

R1 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS
R2 BY ADV. SRI.P.SAMSUDIN
ADV. SRI.K.C.ANTONY MATHEW
ADV. SRI.JITHIN LUKOSE

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.947 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.71 of 2012 on the files of the Additional Sessions Judge-III, Manjeri. The above appeal was filed challenging the judgment whereby the Revision Petitioner was found guilty of the said offence, passed in C.C.No.467 of 2009 on the files of the Judicial First Class Magistrate's Court-I, Perinthalmanna. According to the impugned judgment, the Revision Petitioner stands sentenced

to undergo simple imprisonment for three months under Sec.138 of the N.I. Act and to pay a compensation of ₹2 lakhs to the complainant under Sec.357(3) of the Cr.P.C. In default of payment of compensation, he shall undergo simple imprisonment for two months.

2. The complainant's case is that the accused had borrowed an amount of ₹1,95,000/- from him to purchase an Innova car from his brother Mohammed Basheer and in discharge of the said liability, Ext.P1 cheque was issued for the said amount. But, on presentation, the said cheque was dishonoured and returned for want of sufficient funds.

3. In defence, the accused contended that he had no transaction with the complainant; but his specific case was that the accused had vehicle transaction with the brother of the complainant and in that transaction, a blank cheque was given by the accused in favour of the brother of the complainant

and the complainant had misappropriated the above said cheque and filed this false case against him. Though he raised such a contention, no evidence had been adduced to substantiate the said contention so as to rebut the presumptions under the N.I. Act which stood in favour of the complainant. Therefore, the court below can be justified in finding that the accused has miserably 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 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. 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 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.

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, 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 ₹2,00,000/- (Rupees Two lakhs only) to the complainant/1st respondent as compensation under Sec.357(3) of the Cr.P.C. within a period of six 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 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 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