

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

Cr1.Rev.Pet.No. 949 of 2015 ()

Cr1.A 572/2008 of ADDL.DISTRICT AND SESSIONS JUDGE
(ADHOC-III), NORTH PARAVUR

C.C 2151/2004 of J.M.F.C.-I, ALUVA

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

BINDHU THOMAS
PROPRIETRESS, M/S.VITHAYATHIL TRADERS, CHEMBUMUKKU
VAZHAKKALA, KOCHI-682 030.

BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SHUBHA ABRAHAM
SRI.M.F.MOHAMMED SIYAD

RESPONDENT(S)/RESPONDENTS/STATE AND COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

2. M/S.JANATHA TRADING CORPORATION
MARKET ROAD, ALUVA
REPRESENTED BY ITS MANAGER P.Y.JOHNSON
PALATTY HOUSE, THURAVOOR, ANGAMALY.683 586.

R2 BY ADVS. SRI.J.JULIAN XAVIER
SRI.FIROZ K.ROBIN
R1 BY PUBLIC PROSECUTOR SRI.JIBU.P.THOMAS.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 30-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No. 949 of 2015

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Dated this the 30th 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.572/2008 on the files of the Additional District and Sessions Judge (Adhoc-III), N.Paravur. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.2151/2004 on the files of the Judicial First Class Magistrate's Court-I, Aluva. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for six months and to pay a fine of ₹ 4,00,000/-, which shall be given to the complainant firm as

compensation under Section 357(1)(b) of the Cr.P.C and in default, to undergo simple imprisonment for a further period of one month.

2. The complainant's case is that the accused purchased cement from the complainant firm and in discharge of the amount due under the said transaction to the complainant, Ext.P3 cheque was drawn and issued to the complainant. But, in defence, the accused contended that she had given two signed blank cheques to M/s.Golden Chitty and Finance when she auctioned kuri subscribed by her. Ext.P3 cheque is one of those two cheques. But, no evidence had been produced to substantiate the above said contention except mere suggestion to PW1 when he was cross examined. Thus, she failed to rebut the presumptions 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/2nd 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 2nd respondent. So also, it is found that the debt due to the 2nd respondent was a legally enforceable debt and Ext.P3 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 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. Similarly, the substantive sentence imposed on the revision petitioner is too harsh and excessive. The learned counsel for the revision petitioner prayed for setting aside the sentence of imprisonment also. If the revision petitioner is incarcerated for a period as ordered by the courts below,

the entire family will put in great hardship.

8. 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.

9. 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 time to pay the compensation, I am inclined to grant two months time to pay the fine. Similarly, the substantive sentence of

imprisonment for six months is reduced and modified to simple imprisonment for one day till rising of the court. Consequently, in supersession of the sentence imposed by the trial court and modified by the appellate court, the revision petitioner will stand sentenced as follows:

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.4,00,000/- (Rupees Four lakhs only) within a period of two months from today and the same shall be given to the 2nd respondent/complainant firm as compensation under Section 357(1)(b) 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 compensation.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment

as ordered above on or before 29th September, 2015 with sufficient proof to show payment of fine.

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

The Criminal Revision Petition is disposed of accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.Ato Judge