

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

Crl.Rev.Pet.No. 956 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 505/2011 of III
ADDITIONAL SESSIONS COURT, KOZHIKODE, DATED 24-09-2012

AGAINST THE JUDGMENT IN CC 349/2010 of SPECIAL JUDICIAL
FIRST CLASS MAGISTRATE COURT (MARAD CASES), KOZHIKODE
DATED 18-07-2011

REVISION PETITIONERS/APPELLANT/ACCUSED:

SURESH BABU, AGED 42 YEARS,
S/O. NARAYANAN, ARCHANA,
19/1197/B, HARITHA, NO.43,
CHALAPPURAM P.O., KOZHIKODE.

BY ADVS.SRI.P.R.SREEJITH
SRI.M.PROMODH KUMAR

RESPONDENTS/RESPONDENTS/COMPLAINANT:

1. UNNIKRISHNAN K., AGED 46 YEARS,
S/O. ACHUTHAN, "SREEBHAVAN",
THIRUVANNUR P.O.,
NEAR COTTON MILL,
KOZHIKODE-673 029.
2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM-682 031.

R2 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 31-07-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.956 of 2015

Dated this the 31st 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.505 of 2011 on the files of the III Additional Sessions Judge, Kozhikode. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.349 of 2010 on the files of the Special Judicial First Class Magistrate's Court (Marad Cases), Kozhikode. According to the impugned judgment, the Revision Petitioner is

sentenced to undergo simple imprisonment till rising of the court and ordered to pay compensation of ₹6 laksh to the complainant under Sec.357(3) of the Cr.P.C. In default of payment of compensation, the accused shall undergo simple imprisonment for a period of 120 days.

2. 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.

3. 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.

4. 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.

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 as he is unable to raise the said amount forthwith due to paucity of funds, if this revision petition is found liable to be dismissed.

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 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 ₹6,00,000/- (Rupees six lakhs only) to the 1st respondent/complainant as compensation within a period of six months from today under Sec.357(3) 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 30/1/2016 with sufficient

proof to show payment of compensation.

iv. In default, the Revision Petitioner shall undergo simple imprisonment for a period of 120 days.

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