

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. 958 of 2015 ()

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CRL.A.106/2014 of II ADDL. SESSIONS JUDGE, KOZHIKODE DIVISION.

C.C 433/2008 of J.M.F.C.-IV, KOZHIKODE

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

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ANEESH KUMAR  
S/O.DASAN R., AKKUNNATH HOUSE, BEHIND PNP  
MANKAVE P.O., KOZHIKODE DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENT(S)/COMPLAINANT:

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1. CALICUT CITY SERVICE CO-OPERATIVE BANK LTD.  
THIRUVANNUR BRANCH, THIRUVANNUR, KOZHIKODE  
REPRESENTED BY ITS SECRETARY.

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

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

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

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**K.HARILAL, J.**

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**Crl.R.P.No. 958 of 2015**

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Dated this the 4<sup>th</sup> 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.106/2014 on the files of the II Additional Sessions Judge, Kozhikode Division. The above appeal was filed challenging the judgment whereby the Revision Petitioner was found guilty of the said offence, passed in C.C.No.433/2008 on the files of the Judicial First Class Magistrate's Court-IV, Kozhikode. According to the impugned judgment, the Revision Petitioner stands sentenced to undergo simple imprisonment for one day till rising of the court and to pay a compensation of ₹90,000/- to the complainant under Section

357(3) of the Cr.P.C and in default, to undergo simple imprisonment for three months.

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/1<sup>st</sup> respondent had successfully discharged initial burden of proving execution and issuance of the cheques; 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 1<sup>st</sup> respondent. So also, it is found that the debt due to the 1<sup>st</sup> respondent was a legally

enforceable debt and Exts.P2, P3 and P4 cheques were 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 Section 138 of the N.I. Act. The learned counsel further sought for sometime to pay the compensation 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 time to pay the compensation, I am inclined to grant 'five' 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 compensation of Rs.90,000/- (Rupees Ninety thousand only) to the 1<sup>st</sup>

respondent/complainant within a period of five months from today under Section 357(3) 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 compensation. In that event, the complainant is allowed to realise such deposit, if any.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 5<sup>th</sup> January, 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.

The Criminal Revision Petition is disposed of accordingly.

Sd/-  
**K.HARILAL, JUDGE.**

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P.A to Judge