

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

Crl.Rev.Pet.No. 968 of 2015 ()

CRL.A 285/2012 of ADDL. SESSIONS COURT-I, THIRUVANANTHAPURAM

ST 1270/2007 of J.M.F.C.-II, THIRUVANANTHAPURAM.

REVISION PETITIONER/APPELLANT/ACCUSED:

MARCOSE AUGUSTINE, S/o.AUGUSTINE, SABU BHAVAN,
RESIDENCE No.96, SANKUMUGHAM BEACH P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.V.S.THOSHIN

RESPONDENTS/RESPONDENT/COMPLAINANT & STATE:

1. THE STATE OF KERALA REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 031.
2. SMT.P.SAROJINI, D/o.PANKAJASHE, 'ANIL NIVAS',
TITANIUM.P.O., KOCHUVELI, THIRUVANANTHAPURAM - 695 001.

R1 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 05-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No. 968 of 2015

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Dated this the 5th 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.285/2012 on the files of the Additional Sessions Judge-I, Thiruvananthapuram. The above appeal was filed challenging the judgment whereby the Revision Petitioner was found guilty of the said offence, passed in S.T.No.1270/2007 on the files of the Judicial First Class Magistrate's Court-II, Thiruvananthapuram. 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 fine of ₹75,000/- together

with interest @9% per annum from the date of filing of the complaint till the date of realization to the complainant as compensation under Section 357(3) of the Cr.P.C and in default, to undergo simple imprisonment for one month.

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/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.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 Section 138 of the N.I. Act. The learned counsel further sought for sometime to pay the fine 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 fine, I am inclined to grant 'five' months time to pay the fine. 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 Rs.75,000/- (Rupees Seventy Five thousand only) with 9% interest from the date of filing of the complaint till the date of realization within a period of five months from today and the same shall be given to the 2nd respondent/complainant under Section 357(3) of the Code of Criminal Procedure. 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 4th January, 2016 with sufficient proof to show payment of fine.

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

The Criminal Revision Petition is disposed of accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge