

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

Cr1.Rev.Pet.No. 997 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 276/2013 of ADDITIONAL
DISTRICT AND SESSIONS COURT - VII, THIRUVANANTHAPURAM.

AGAINST THE JUDGMENT IN ST 491/2011 of J.M.F.C.-I,
THIRUVANANTHAPURAM.

REVISION PETITIONER/APPELLANT/ACCUSED:-

GOPALAKRISHNAN NAIR,
S/O.PONNAPPAN, G.K.HOUSE, MUDAVANVILA,
VELLAYANI, NEMOM P.O., TRIVANDRUM.

BY ADV. SRI.SABU S.KALLARAMOOLA

RESPONDENT(S)/RESPONDENT/COMPLAINANT:-

1. P.P.JOSEPH,
S/O.POULOSE, NANDANAM, T/C.NO.31/1369,
LTL JUNCTION, CHACKAI, BEACH ROAD P.O.,
TRIVANDRUM - 695 005.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

R2 BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 21-08-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.997 of 2015

Dated this the 21st 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.276 of 2013 on the files of the Additional District & Sessions Judge-VII, Thiruvananthapuram. The above appeal was filed challenging the judgment whereby the Revision Petitioner was guilty of the said offence, passed in S.T.No.491 of 2011 on the files of the Judicial First Class Magistrate's Court-I, Thiruvananthapuram. According to the impugned judgment, the Revision

Petitioner is sentenced to pay a fine of ₹1,38,000/- under Sec.138 of the N.I. Act and in default of payment of fine, he shall undergo simple imprisonment for a period of six months. If the fine amount is realised, the same shall be paid to the complainant as compensation under Sec.357(1)(b) of the Cr.P.C.

2. The complainant's case is that the accused borrowed an amount of ₹1 lakh from the complainant and in discharge of the said liability, he issued Ext.P1 cheque for the said amount and when the said cheque was presented for encashment, the same was dishonoured and returned for want of sufficient funds. To discharge the initial burden cast upon him, the complainant was examined as P.W.1 and another witness was examined as P.W.2 and marked Exts.P1 to P5. On an appraisal of the aforesaid evidence, the courts below concurrently found that the complainant has successfully discharged the initial burden and

thereby, the presumptions under Secs.118(a) and 139 of the N.I. Act would stand in favour of the complainant.

3. To rebut the presumptions, two witnesses were examined as D.Ws.1 and 2. After analysing the evidence of D.Ws.1 and 2, the courts below concurrently found that the accused does not have a consistent version regarding issuance of Ext.P1 cheque. In his statement under Sec.313 of the Cr.P.C., the stand taken by the accused was that the cheque has been obtained forcefully by the complainant who had come to his shop along with 3 or 4 persons demanding the payment of franchise fee. But the version given by D.W.1 is that when the complainant demanded the franchise fee, a cheque was filled up by him and signed by the accused and handed over to the complainant. When P.W.1 was examined, it was suggested that a blank signed cheque was handed over to the complainant. Thus,

the defence versions are inconsistent opposing and mutually destructive. In this analysis, the court below is justified in finding that the accused failed to rebut the presumptions which stood in favour of the complainant.

4. At last the learned counsel submitted that the sentence imposed on the petitioner is disproportionate with the nature and gravity of the offence 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.

5. 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.

6. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, 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 pay a fine of ₹1,38,000/- (Rupees One lakh and thirty eight thousand only) within a period of five months from today and the same shall be given to the 1st respondent as compensation under Sec.357(1)(b) of the Cr.P.C.

ii. In default, the Revision Petitioner

shall undergo simple imprisonment for a period of six months.

iii. 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