

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

Crl.Rev.Pet.No. 999 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 536/2010 of ADDITIONAL
SESSIONS COURT - IV, KOLLAM DATED 28-08-2014

AGAINST THE JUDGMENT IN ST 1109/2007 of J.M.F.C.,
SASTHAMCOTTA.

REVISION PETITIONER/APPELLANT IN CRL.A
NO.536/2010/ACCUSED IN S.T.NO.1109/2007:

SUSAN ABRAHAM, AGED 38 YEARS,
D/O.GEORGE KUTTY, VATTAVILA HOUSE,
KARIMTHOTTUVA P.O., KUNNATHOOR VILLAGE,
KUNNATHOOR THALUK, KOLLAM DISTRICT

BY ADV. SRI.P.V.DILEEP

RESPONDENT(S)/RESPONDENT NO.2 IN CRL.A.NO.536/2010/
COMPLAINANT IN S.T.NO.1109/2007 RESPONDENT NO. 1 IN
CRL.A.NO.536/2010:

1. MINI JACOB,
JACOBS BUNGLAW, KARIMTHOTTUVA P.O.,
KUNNATHOOR EAST,
KUNNATHOOR THALUK, KOLLAM DISTRICT

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

R1 BY ADV. SRI.B.MOHANLAL

R2 BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 18-08-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.999 of 2015

Dated this the 18th 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.536 of 2010 on the files of the Additional Sessions Judge, Kollam. The above appeal was filed challenging the judgment whereby the Revision Petitioner was found guilty of the said offence, passed in S.T. No.1109 of 2007 on the files of the Judicial First Class Magistrate's Court, Sasthamcotta. According to the impugned judgment,

the Revision Petitioner is sentenced to undergo simple imprisonment till rising of court and ordered to pay a compensation of ₹3 lakhs to the complainant under Sec.357(3) of the Cr.P.C. In default, to undergo simple imprisonment for three months for the offence punishable under Sec.138 of the N.I. Act.

2. The complainant's case is that the accused borrowed an amount of ₹3 lakhs as loan from him and in discharge of the said liability, he drawn and 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, the complainant was examined as P.W.1 and Exts.P1 to P6 were marked. On an appraisal of the evidence, the court below found that the complainant has successfully discharged the initial burden. But I do not find any reason to interfere with the said finding.

3. To rebut the presumptions under Secs.118(a)

and 139 of the N.I. Act, no evidence had been adduced by the accused; but admitted the execution and issuance of the cheque. He contended that he borrowed an amount of ₹30,000/- only and at the time of borrowing the amount, she entrusted one signed blank cheque to the complainant. After the repayment, the complainant did not return the cheque and later the complainant misused the same for prosecuting the accused. Except the bare suggestions to P.W.1, no evidence was available on record to probabalise the contention raised in dispute. In that context, the court below is justified in finding that the accused has miserably failed to rebut the presumptions under the N.I. Act. There is no illegality or impropriety in any of the findings and I do not find any kind of perversity in the appreciation of evidence from which those findings have come.

4. At last, the learned counsel for the petitioner submits 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 sought for some time to pay the compensation, if this revision petition 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, 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 ₹3,00,000/- (Rupees Three lakhs only) to the 1st respondent/complainant as compensation under Sec.357(3) of the Cr.P.C. within a period of six months from today.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 18/2/2016 with sufficient proof to show payment of compensation.

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

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)

Nan/

//true copy//

P.S. to Judge

