

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

Crl.Rev.Pet.No. 1016 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 479/2010 of III
ADDITIONAL SESSIONS COURT, THRISSUR DATED 16-03-2015.

AGAINST THE JUDGMENT IN CC 1096/1999 of J.M.F.C.,
CHAVAKKAD DATED 29-06-2010.

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

E.M.BABU,
S/O.MANI, EDAKALATHOOR HOUSE, PALAYUR,
CHAVAKKAD TALUK, THRISSUR DISTRICT.

BY ADV. SRI.K.AMAR RAGH

RESPONDENT(S)/COMPLAINANT:

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM 682031.

2. N.J. GEORGE,
B.B. BHAVAN, PHARMACEUTICALS, ORUMANAYOOR,
CHAVAKKAD (NEELAMKAVIL HOUSE), ORUMANAYOOR,
CHAVAKKAD, THRISSUR 680506.

R2 BY ADV. SRI.N.J.JOHNSON

BY ADV. SRI.T.K.AJITH KUMAR

R1 BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 20-08-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.1016 of 2015

Dated this the 20th 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.479 of 2010 on the files of the III Additional Sessions Judge, Thrissur. The above appeal was filed challenging the judgment whereby the Revision Petitioner was found guilty of the said offence, passed in C.C.No.1096 of 1999 on the files of the Judicial First Class Magistrate's Court, Chavakkad. According to the impugned judgment, the Revision Petitioner stands sentenced to undergo simple

imprisonment for one month and to pay a fine of ₹1,18,450/- and in default of payment of fine, he shall undergo simple imprisonment for a further period of one month for the offence under Sec.138 of the N.I. Act. If the fine amount amount is realised, the same shall be given to the complainant as compensation under Sec.357(1) of the Cr.P.C.

2. The complainant's case is that the complainant subscribed three kuries conducted by the 2nd accused/company wherein the other accused are partners. Since the kuri was stopped abruptly, the complainant and others demanded the amount already paid towards five kuries. To discharge the said liability, the accused Nos.1 and 2 drawn and issued Ext.P4 cheque for an amount of ₹1,18,450/- and when the cheque was presented for encashment, the same was dishonoured for want of sufficient funds. To discharge the initial burden, the complainant was examined as P.W.1 and Exts.P1 to P17 were marked. On an appraisal of the aforesaid evidence, the courts

below concurrently arrived at a finding 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. In defence, when P.W.1 was cross-examined, it was suggested to P.W.1 that the complainant was a frequent visitor to the office of the 1st accused and somehow the complainant managed to get a blank signed cheque from the office of the first accused and misused the same against these accused. Apart from the aforesaid suggestions made to P.W.1, no evidence had been adduced to substantiate the alleged misusing of the cheque from the office of the 1st accused. Even though Ext.D1 series and D15 and D16 were marked, those documents would not give any kind of assurance to the contentions raised in defence. In the absence of the rebuttal evidence, the courts below are justified in finding that the accused has failed to rebut the presumptions under the N.I. Act

which stood in favour of the complainant.

4. 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.

5. In the light of the decisions quoted above and the submission made at the Bar, the substantive sentence of simple imprisonment for one month will stand reduced and modified to simple imprisonment for one day till rising of the court and four months

time is given to pay the fine. Consequently, in supersession of the sentence imposed by the trial court and modified by the appellant court, the revision petitioner will stand sentenced as follows:

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.1,18,450/- (Rupees One lakh eighteen thousand four hundred and fifty only) within a period of four months from today and the same shall be given to the 2nd respondent as compensation under Sec.357 (1)(b) 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 19/12/2015 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.S. to Judge