

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

Crl.Rev.Pet.No. 1023 of 2015 ()

**(AGAINST THE JUDGMENT IN CRL.A.NO. 18/2014 OF IV ADDL.SESIONS COURT,
THODUPUZHA DATED 29-06-2015)**

**(AGAINST THE JUDGMENT IN ST.NO. 32/2013 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT-II, THODUPUZHA DATED 10-01-2014)**

REVISION PETITIONER/APPELLANT/ACCUSED :

**JOJO MATHEW, AGED 39 YEARS,S/O.T.MATHEW,
THEROTTUMARYIL HOUSE, CHEENIKUZH Y P.O.,
OLIVIRIPPU, UDUMPANNOOR VILLAGE, THODUPUZHA.**

**BY ADVS.SRI.JIMMY GEORGE
SRI.M.R.SURESH**

RESPONDENT(S)/RESPONDENT/STATE AND COMPLAINANT:

- 1. STATE OF KERALA,
REPRESENTED BY ADDITIONAL PROSECUTOR, THODUPUZHA,
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682 031.**
- 2. PRIMARY CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT,
BANK LTD.NO.4388, THODUPUZHA,
REPRESENTED BY ITS SECRETARY MARYKUTTY T.T.,
W/O. AUGUSTINE,AGED 57 YEARS, PUTHIYEDATH HOUSE,
AVOLI KARA, MUVATTUPUZHA VILLAGE.**

**R1 BY PUBLIC PROSECUTOR SRI.JUSTIN JACOB
R2 BY ADV. SRI.LUIZ GODWIN D'COUTH**

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 17-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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APPENDIX

PETITIONER'S ANNEXURES:

ANNEX 1 COPY OF THE AFFIDAVIT SWORN IN BY THE 2ND RESPONDENT.

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

P.A.TO JUDGE

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K.HARILAL, J.

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Crl.R.P.No.1023 of 2015

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Dated this the 17th day of August, 2015

ORDER

The revision petitioner is the accused in S.T.No. 32/2013 on the files of the Judicial First Class Magistrate's Court-II, Thodupuzha as well as the appellant in Crl.Appeal No. 18/2014 on the files of the Additional Sessions Judge-IV, Thodupuzha. He was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act on a complaint filed by the 2nd respondent herein. After trial, the learned Magistrate found the revision petitioner guilty of the said offence and convicted thereunder. He was sentenced to undergo simple imprisonment for four months and to pay a fine of Rs.86,823/-, which shall be given to the complainant as compensation under Section 357(1) of the Cr.P.C. In default, to undergo simple imprisonment for a further period of two months. Though he had preferred the

above Crl. Appeal, the appellate court also confirmed the conviction but modified the sentence. The substantive sentence of simple imprisonment was modified to simple imprisonment for one day till rising of the court and sustained the rest of the sentence as such without any change. The legality and propriety of the concurrent findings of conviction and sentence are under challenge in this revision petition.

2. Heard the learned counsel for the petitioner and the learned counsel for the 2nd respondent. Though this revision petition has been filed on various grounds, challenging the concurrent findings of conviction and sentence, the learned counsel for the petitioner submits that the challenge under this revision petition is confined to sentence only. After passing of the impugned judgment under challenge, the revision petitioner had paid the entire amount directed to be paid as fine to the 2nd respondent and now no amount is due from him to the 2nd respondent. The learned counsel for the 2nd respondent submits that the 2nd respondent has received the entire amount directed to be paid as fine and

now he has no subsisting grievance at all and he does not intend to proceed against the petitioner. In view of the payment of compensation directly to the complainant, the learned counsel for the petitioner urged for modifying the substantive sentence of imprisonment also.

3. 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.

4. In view of the nature and gravity of the offence under Section 138 of the Negotiable Instruments Act and the above referred decisions, I find that the substantive

sentence of imprisonment imposed on the revision petitioner can be modified as prayed for by the learned counsel for the petitioner.

5. Consequently, in supersession of the sentence imposed by the trial court and confirmed by the appellate court, the revision petitioner will stand sentenced to undergo simple imprisonment for one day till rising of the Court only. Having regard to the fact that fine amount had been paid directly to the complainant as compensation, the direction to pay fine would stand converted to compensation under Section 357(3) Cr.P.C and the trial court is directed to make necessary corrections in the fine register in this respect. He shall appear before the trial court to suffer substantive sentence as stated above within a period of 'one' month from today. It is made clear that the default sentence will not come into operation.

The revision petition is disposed of.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge

