

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

Crl.Rev.Pet.No. 1030 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 7/2014 of III
ADDITIONAL DISTRICT & SESSIONS COURT, THODUPUZHA DATED
12-08-2014

AGAINST THE JUDGMENT IN ST 5/2013 of J.M.F.C.-II,
THODUPUZHA DATED 20-12-2013

REVISION PETITIONER(S)/APPELLANT/ACCUSED :

PRASAD M.B., AGED 30 YEARS,
S/O. MAHESWARAN, BLATHIL HOUSE, ERATTAYAR P.O.,
IDUKKI DISTRICT.

BY ADVS.SRI.K.S.HARIHARAPUTHRAN
SRI.M.D.SASIKUMARAN
SRI.GEORGE MATHEW
SRI.SUNIL KUMAR A.G
SRI.DIPU JAMES

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE :

1. SREE GOKULAM CHIT & FINANCE CO. (P) LTD.,
ARCO ROAD, KODAMBAKAM, CHENNAI-600 024,
REP. BY ITS POWER OF ATTORNEY HOLDER, MR.JOMY M.C.
S/O. CHACKO, (SENIOR BUSINESS MANAGER),
THODUPUZHA BRANCH-685 584.

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

R1 BY ADV. SMT.A.SREEKALA

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.1030 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.7 of 2014 on the files of the III Additional District & Sessions Judge, Thodupuzha. The above appeal was filed challenging the judgment whereby the Revision Petitioner was guilty of the said offence, passed in S.T.No.5 of 2013 on the files of the Judicial First Class Magistrate's Court-II, Thodupuzha. According to the impugned judgment, the Revision Petitioner is sentenced to

undergo imprisonment till rising of the court and to pay a fine of ₹1,62,783/- under Sec.138 of the N.I. Act and in default of payment of fine, he shall undergo simple imprisonment for a period of four months. If the fine amount is realised, the same shall be given to the complainant under Sec.357(1)(b) of the Cr.P.C.

2. The complainant's case is that the accused had joined a chitty conducted by the complainant and when the chitty was prized, an amount of ₹1,49,258/- was given to the accused. When he defaulted the repayment of the chitty amount, he had drawn and issued Ext.P7 cheque for an amount of ₹1,62,273/- to the complainant and when he presented the said cheque for encashment, the same was dishonoured and returned for want of sufficient funds. In spite of the receipt of lawyer's notice demanding the said amount, he has not paid the said amount; nor has he sent a reply denying the liability.

3. The contention raised in defence is that a

blank signed cheque was given to the complainant at the time, when he received the chitty amount from the complainant, as security. But no evidence had been adduced to substantiate the said contention and no explanation was forthcoming as to the silence of the accused, in spite of receipt of lawyer's notice threatening criminal prosecution.

4. In the above view, the courts below are justified in finding that the complainant has successfully discharged the initial burden; but the accused failed to rebut the said presumptions under the N.I. Act which stood in favour of the complainant.

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. At last the learned counsel submitted that the sentence imposed on the petitioner/accused is disproportionate with the nature and gravity of the offence. Further, the learned counsel prayed for some time to pay the compensation, if this revision is found meritless.

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, 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 a fine of ₹1,62,783/- (Rupees One lakh sixty two thousand seven hundred and eighty three only) within a period of six months from today and the same shall be given to the 1st respondent/complainant 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 22/2/2016 with sufficient proof to show payment of compensation.

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

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)

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P.S. to Judge