

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. 1044 of 2015 ()

AGAINST THE JUDGMENT IN CRL.A 594/2012 of ADDL. DISTRICT &
SESSIONS COURT - II, NORTH PARAVUR DATED 27-07-2015

AGAINST THE JUDGMENT IN ST 176/2010 of J.F.C.M.COURT- III,
ALUVA DATED 10.8.2012

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REVISION PETITIONER(S)/APPELLANT/ACCUSED:

GEETHA G. KUMAR, AGED 38 YEARS,
W/O.LATE R.G.KUMAR, NO.3, ASWATHI APARTMENTS,
THOTTAKKATTUKARA, ALUVA, NOW RESIDING AT 'SAPHALYAM',
KIZHEDATH, NETHAJI ROAD, PUTHIYARA P.O.
KOZHIKODE DISTRICT.

BY ADV. SRI.S.K.SAJU

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

1. ABDUL SALAM K.M.
KALATHIL HOUSE, U.C.COLLEGE P.O, ALUVA-683 101.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA-682031.

R2 BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS

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

OKB

K.HARILAL, J.

Crl.R.P. No.1044 of 2015

Dated this the 21st day of August, 2015.

O R D E R

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.594/12 on the files of the court of the II Additional District & Sessions Judge, N. Paravur. The above appeal was filed challenging the judgment whereby the revision petitioner was found guilty of the said offence, passed in S.T.No.176/10 on the files of the Judicial First Class Magistrate's Court-III, Aluva. According to the impugned judgment, the revision petitioner stands sentenced to undergo simple imprisonment for one day till rising of the court and to pay a compensation of Rs.5 lakhs to the complainant and in default to undergo simple

imprisonment for three months.

2. The complainant's case is that the accused on different occasions received Rs.4,60,000/- from him to start a garment business and subsequently when she could not start the said business, in discharge of the said liability, she had drawn and issued Ext.P1 cheque for the said amount and when he presented the cheque, the same was dishonoured and returned for want of sufficient funds.

3. To discharge the initial burden, the complainant was examined as P.W.1 and Exts.P1 to p4 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 to prove execution and issuance of the cheque in discharge of a legally enforceable liability and the presumptions under Sections 139 and 118(a) of the N.I. Act would stand in favour of the complainant. I do not find any perversity in the appreciation of the said evidence.

4. What remains to be considered is, whether the

accused had rebutted the presumptions which stood in favour of the complainant. Absolutely, no evidence, either oral or documentary, had been adduced to rebut the presumptions. In the statement under Section 313 of the Cr.P.C., she simply denied the liability and absolutely failed to give any explanation as to how the cheque happened to be in the possession of the complainant. So also, nothing brought out in the cross examination of P.W.1 to discredit her version or to probabalise the denial of liability made by the accused. Thus, in the absence of a defence case so as to improbabilise the complainant's case or to probabalise the denial of liability under the cheque the courts below are justified in finding that the accused miserably failed to rebut the presumption. There is no illegality or impropriety in any of the findings whereby the court below convicted the accused.

5. The learned counsel for the revision petitioner reiterated the contentions which were raised before the courts below and got rejected concurrently. The

learned counsel urged for a re-appreciation of evidence once again, which is not permissible under the revisional jurisdiction unless any kind of perversity is found in the appreciation of evidence. The revision petitioner failed to point out any kind of perversity in the appreciation of evidence or illegality or impropriety in the findings whereby the trial court convicted her.

6. At last, the learned counsel for the revision petitioner submits that the sentence imposed on the revision petitioner is disproportionate with the gravity and nature of the offence contemplated under Section 138 of the N.I. Act. The learned counsel further sought for some time to pay the compensation, if this revision petition is found meritless, as she is unable to raise the said amount forthwith due to paucity of funds.

7. 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 v. 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.

8. Having regard to the nature and gravity of the offence and in the light of the decisions quoted above, the revision petitioner is given 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. She shall pay a compensation of Rs.5,00,000/- (Rupees Five lakhs only) within a period of six months from today to the 1st respondent/complainant, under Section 357 (3) of the Cr.P.C.
- iii. She shall appear before the Trial Court to

suffer the substantive sentence of simple imprisonment as ordered above on or before 21.2.2016 with sufficient proof to show payment of compensation.

- iv. In default, she shall undergo simple imprisonment for a period of three months.
- v. If the revision petitioner had deposited any amount in the trial court, in compliance with the direction of this Court or appellate court, that amount shall be given credit to and the balance alone need be paid as compensation. In that event, the 1st respondent/complainant is allowed to realise such deposit, if any.

The criminal revision petition is disposed of accordingly.

Sd/-
K. HARILAL, JUDGE

okb.