

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 21ST DAY OF OCTOBER 2015/29TH ASWINA, 1937

Crl.Rev.Pet.No. 1351 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO.18/2014 of II ADDITIONAL
SESSIONS COURT, PALAKKAD DATED 31-07-2015

AGAINST THE JUDGMENT IN ST 31/2011 of J.M.F.C., CHITTUR
DATED 25-11-2013

REVISION PETITIONER/APPELLANT/ACCUSED:

GOPALAKRISHNAN, AGED 51 YEARS,
S/O. K. VISWANATHAN, TEACHER, G.H.S.S.,
KODUVAYUR, CHITTUR, PALAKKAD.

BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL)

RESPONDENTS/RESPONDENTS/STATE AND COMPLAINANT:

1. DR.PRASANTH, AGED 45 YEARS,
PRIMARY HEALTH CENTRE,
KODUVAYUR, CHITTUR,
PALAKKAD-678 701.
2. STATE OF KJERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM-682 031.

R2 BY PUBLIC PROSECUTOR SRI.V.S. SREEJITH

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 21-10-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.1351 of 2015

Dated this the 21st day of October, 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.18/2014 on the files of the II Additional Sessions Judge, Palakkad Division. The above appeal was filed challenging the judgment whereby the Revision Petitioner was found guilty of the said offence, passed in S.T.No.31/2011 on the files of the Judicial First Class Magistrate's Court, Chittur. 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 fine of ₹2,25,000/- and in default, to undergo simple imprisonment for a period of three months. On realisation of the fine amount, the same shall be given to the complainant as compensation under Sec.357(1) (b) of the Cr.P.C.

2. The case of the complainant is that, earlier, there was a case instituted under Sec.138 of the N.I. Act by the complainant against the accused and the said case was compromised and as the part of the terms of compromise, the accused agreed to pay a sum of ₹2,25,000/- to the complainant. In discharge of the said liability, the accused had drawn and issued Ext.P1 cheque for the said amount and when he presented the said cheque for encashment, 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 P6

were marked. After analysing the aforesaid evidence, the courts below concurrently found that the complainant has successfully discharged the initial burden and thereby, the presumptions under the N.I. Act would stand in favour of the complainant.

4. Going by the impugned judgment which is under challenge, it is seen that no evidence has been adduced by the complainant to rebut the said presumptions under Secs.139 and 118(a) of the N.I. Act which stood in favour of the complainant. So also, the accused failed to bring out any kind of improbability while examining the complainant as P.W.1. In such circumstances, the courts below are justified in finding that the accused miserably failed to rebut the presumptions which stood in favour of the complainant. There is no illegality or impropriety in the said findings and I do not find any kind of perversity in the appreciation of evidence.

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 him.

6. At last, the learned counsel for the petitioner sought for 10 months time to pay the cheque amount, if this revision petition is found meritless.

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 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.

8. Having regard to the nature and gravity of the offence under the N.I. Act and in the light of the decisions quoted above, the revision petitioner is given six months time to pay the compensation. Consequently, in modification of the modified sentence imposed by the lower appellate court, the 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 ₹2,25,000/- (Rupees Two lakhs and twenty five thousand only) within a period of six months from today and the same shall be given to the complainant/1st 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 21/4/2016 with sufficient proof to show payment of compensation.

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

vi. If he had deposited his LIC Policy, as security, before the lower appellate court to suspend the sentence, the said court is directed to release the same so as to enable him to encash the said policy, for raising funds to pay compensation.

The Criminal Revision Petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge