

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

Crl.Rev.Pet.No. 3048 of 2010

AGAINST THE JUDGMENT IN CRL.A.NO. 36/2009 of SESSIONS COURT,KASARAGOD DATED 26-03-2010.

AGAINST THE JUDGMENT IN CC 410/2008 of J.M.F.C.-II, KASARAGOD DATED 21-01-2009.

REVISION PETITIONER(S)/APPELLANT.ACCUSED:

C.A.NARAYANAN,AGED 51 YEARS,
S/O.CHOYI, ARAMANGANAM HOUSE, KALANAD POST,
KASARGOD TALUK AND DISTRICT.

BY ADV. SRI.S.JIJI

RESPONDENT/RESPONDENTS/COMPLAINANT AND STATE:

1. K.NALINI AMMA, W/O.K.NARAYANAN NAIR,
NIKUNJAN HOUSE, POINACHI, YHEKKIL VILLAGE AND POST
KASARGOD TALUK AND DISTRICT-671 541.

2. STATE OF KERALA, REP.BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 10-07-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.3048 of 2010

Dated this the 10th day of July, 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.36 of 2009 on the files of the Sessions Judge, Kasaragod. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.410 of 2008 on the files of the Judicial First Class Magistrate's Court-II, (Additional Munsiff), Kasaragod. According to the impugned judgment, the

Revision Petitioner is sentenced to undergo simple imprisonment for 15 days. He is further directed to pay an amount of ₹4 lakhs as compensation under Sec.357(3) of the Cr.P.C. and in default of payment, to undergo simple imprisonment for a period of one month. The amount of compensation, if realised, the same shall be paid to the complainant.

2. 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. The courts below had concurrently found that the complainant/1st respondent had successfully discharged initial burden of proving execution and issuance of the cheque; whereas the Revision Petitioner had failed to rebut the

presumption under Section 118(a) and 139 of the N.I. Act which stood in favour of the 1st respondent. So also, it is found that the debt due to the 1st respondent was a legally enforceable debt and Ext.P1 cheque was duly executed and issued in discharge of the said debt. I do not find any kind of illegality or impropriety in the said findings or perversity in appreciation of evidence, from which the above findings had been arrived. Therefore, I am not inclined to re-appreciate entire evidence once again and I confirm the concurrent findings of conviction.

3. The counsel for the Revision Petitioner submits that the sentence imposed on the Revision Petitioner is disproportionate with the gravity and nature of the offence. He further submits that the Revision Petitioner is willing to pay the compensation as ordered by the court below; but he is unable to raise the said amount forthwith due to paucity of funds. But he is ready to pay the compensation within two months.

4. Similarly, the substantive sentence imposed on the revision petitioner is too harsh and excessive. The learned counsel for the revision petitioner prayed for setting aside the sentence of imprisonment also. If the revision petitioner is incarcerated for a period as ordered by the courts below, the entire family will put in great hardship.

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. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, expressing willingness to pay the compensation within two months, I am inclined to grant two months time to pay the compensation. Similarly, the substantive sentence of simple imprisonment for 15 days will stand reduced and modified to simple imprisonment for one day till rising of the court and the petitioner is given two months time to pay the compensation. Consequently, in supersession of the sentence imposed by the trial court and modified by the appellate 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 Rs. 4,00,000/- (Rupees Four lakhs only) to the first respondent/complainant as compensation under Sec.357(3) of the

Cr.P.C. within a period of two months from today.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 10/9/2015 with sufficient proof to show payment of compensation.

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

The Criminal Revision Petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge