

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

CrI.Rev.Pet.No. 2136 of 2014 ()

CrI.A 412/2013 of III ADDITIONAL SESSIONS COURT, ERNAKULAM
DATED 30-06-2014

ST 289/2012 of JUDICIAL FIRST CLASS MAGISTRATE COURT - III,
KOCHI DATED 31.7.2013.

REVISION PETITIONER(S)/PETITIONERS/APPELLANTS/ACCUSED :

1. M/S.KOBBLER

DOOR NO.36/4502, C-416-9(30), CITY CENTRE
THRISSUR-680 001

REPRESENTED BY PARTNER MANISH THAPAR.

2. MANISH THAPAR AGED 35 YEARS

S/O. RAKESH THAPAR, PARTNER, M/S. KOBBLER CITY CENTRE
THRISSUR-680 001, RESIDING AT 6C
SKYLINE APARTMENTS WILLOW HEIGHTS, KURIACHIRA
THRISSUR-6.

BY ADV. SRI.P.K.SAJEEV

RESPONDENT(S)/COMPLAINANT & STATE OF KERALA :

1. M/S.SHREYAS MARKETING

39/582-B, SUDHARMA MONASTRY ROAD, ERNAKULAM-682 011
REP.BY MANAGING PARTNER, D.ANAND KUMAR PAI
S/O. M.D.PAI.

2. STATE OF KERALA

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

R1 BY ADV. SRI.THOMAS M.JACOB

R2 BY PUBLIC PROSECUTOR SMT.MADHU BEN.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 29-05-2015, ALONG WITH CrI.R.P. 2137/2014,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

stu

K.HARILAL, J.
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Crl.R.P.Nos.2136 & 2137 of 2014
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Dated this the 29th day of May, 2015

COMMON ORDER

These Revision Petitions are filed challenging the judgment passed in Criminal Appeal No.412/2013 by the III Additional Sessions Judge, Ernakulam. The above appeal was filed challenging the judgment finding that the Revision Petitioners in Crl.R.P.No.2136/2014 are guilty of the offence under Section 138 of the Negotiable Instruments Act, passed in S.T.No.289/2012 on the files of the Judicial First Class Magistrate's Court-III, Kochi. Crl.R.P.No.2136/2014 is filed by the accused, who is the 1st respondent in Crl.R.P.No.2137/2014, challenging the concurrent findings of conviction and sentence imposed on him for the offence under Section 138 of the N.I.Act. According to the impugned judgment, the 2nd accused is sentenced to undergo simple imprisonment for one day till

rising of the court and to pay a compensation of ₹3,69,871/- to the complainant/1st respondent in Crl.R.P.No.2136/2014 under Section 357(3) of the Cr.P.C and in default, he shall undergo simple imprisonment for six months.

2. The learned counsel for the Revision Petitioners 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 Petitioners 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.

3. The courts below had concurrently found that the complainant/1st respondent in Crl.R.P.No.2136/2014 had successfully discharged initial burden of proving execution and issuance of the cheque; whereas the Revision

Petitioners 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.P4 cheque was duly executed and issued in discharge of the said debt.

4. This Court is satisfied that the courts below had meticulously evaluated the evidence on record. 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.

5. At last, the learned counsel for the Revision Petitioners submits that the sentence imposed on the Revision Petitioners 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 sometime

to pay the compensation as he is unable to raise the said amount forthwith due to paucity of funds.

6. 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.

7. Crl.R.P.No.2137/2014 is filed by the 1st respondent in Crl.R.P.No.2136/2014, challenging the illegality concurrently committed by the courts below by denying interest to the cheque amount in violation of the decision of

the Apex Court in **Vijayan vs. Baby** (2011(4) KLT 355). He is the complainant in S.T.No.289/2012 on the files of the Judicial First Class Magistrate's Court-III, Kochi as well as the 1st respondent in Crl.Appeal No.412/2013 on the files of the III Additional Sessions Judge, Ernakulam. The learned counsel drew my attention to the above decision and submits that it was incumbent upon the trial court to grant interest @ 9% from the date of cheque. But the court below has failed to observe the mandate of the Supreme Court without any reason.

8. I have meticulously considered the decisions cited above and found that the claim projected in this revision petition is reasonable as well as justifiable. In view of the above view, the respondents in this revision petition is liable to pay interest @9% to the cheque amount from the date of cheque. Consequently, Crl.R.P.No.2137/2014 will stand allowed as shown below.

9. 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, I am inclined to grant 'six' months time to pay the compensation. Consequently, Crl.R.P.No.2136/2014 will stand disposed of subject to the following terms.

i. The 2nd Revision Petitioner shall undergo simple imprisonment for one day till rising of the court.

ii. The 2nd Revision Petitioner shall pay a compensation of Rs.3,69,871/- (Rupees Three lakhs Sixty Nine thousand Eight hundred and Seventy One only) with interest @9% from the date of cheque to the 1st respondent/complainant within a period of 'six' months from today.

iii. The 2nd Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 30th November, 2015 with sufficient proof to show payment of compensation, as ordered above.

iv. In default, the 2nd Revision Petitioner shall undergo simple imprisonment for a period of six months.

In the result, Crl.R.P.No.2136/2014 is disposed of and Crl.R.P.No.2137/2014 is allowed.

stu

Sd/-
K.HARILAL,
JUDGE.

//True copy//

P.Ato Judge