

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 28TH DAY OF JUNE 2013/7TH ASHADHA, 193

Crl.Rev.Pet.No. 803 of 2003 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO.721/2001 of ADDL. DISTRICT
COURT (ADHOC), ERNAKULAM DATED 05-02-2003.

AGAINST THE JUDGMENT IN CC 254/1998 of ADDL.C.J.M. (E&O),
ERNAKULAM, DATED 22-09-2001.

REVISION PETITIONER/APPELLANT/ACCUSED:-

P.V.HARIHARAN,
PUTHENCHIRAYIL HOUSE,
THIRUVANIYOOR P.O.,
ERNAKULAM.

BY ADV. SRI.A.T.ANILKUMAR

RESPONDENTS/STATE & COMPLAINANT:-

1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
ERNAKULAM.
2. M/S.RELIENTECH, 108,
JAWAHAR NAGAR, KOCHI : 20,
REPRESENTED BY ITS MANAGING PARTNER,
SUNOJ, S/O.ANANDAN.

R1 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 28-06-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. HARILAL, J.

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Crl.R.P.No.803 of 2003.
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Dated this the 28th June, 2013

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.721/2001 on the files of the Additional Sessions Judge (Adhoc-I), Ernakulam. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.254/1998 on the files of the Additional Chief Judicial Magistrate's Court, (Economic Offences), Ernakulam. According to the impugned judgment, the Revision Petitioner is sentenced to pay a fine of Rs.43,000/- and if the same is realised Rs.41,000/- to be paid to the

complainant/second respondent and in default to undergo simple imprisonment for one month.

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/second 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 second respondent. So also, it is found that the debt due to the second 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 at. 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 challenge under this Revision is confined to sentence only. 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. 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/fine within three 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 be 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 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.

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 three months, I am inclined to grant three months time to pay the compensation. Similarly, the substantive sentence of imprisonment is reduced and modified to simple imprisonment for a period of three months. Consequently, this Revision Petition is liable to be 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 Rs.43,000/- (Rupees forty three thousand only) within a period of three months from today and out of which Rs.41,000/- shall be paid to the complainant/second respondent as compensation under Section 357(1(b) of the Cr.PC.

iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment

as ordered above on or before 27.9.2013 with sufficient proof to show payment of compensation .

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

The Criminal Revision Petition is disposed of accordingly.

**Sd/-
K. HARILAL,
(JUDGE)**

Kvs/-

The following deletions are made in paragraph 6 of the final order dated 28.6.2013 in Crl.R.P.No.803/2003, vide order dated 23.08.2013 in Crl.M.A.No.6007/2013 in Crl.R.P.No.803/2003.

The penultimate sentence of paragraph 6, which reads as follows is deleted:

“Similarly, the substantive sentence of imprisonment is reduced and modified to simple imprisonment for a period of three months”.

(contd.....)

Clause (i) to paragraph 6, which reads as follows is deleted:

“The Revision Petitioner shall undergo simple imprisonment for one day till rising of the Court”.

Clause (iii) to paragraph 6, which reads as follows is deleted:

“The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 27.9.2013 with sufficient proof to show payment of compensation”.

Sd/- Registrar (Judicial)