

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 9TH DAY OF JANUARY 2014/19TH POUSHA, 1935

Crl.Rev.Pet.No. 68 of 2014

**CRL.A 214/2011 of SESSIONS COURT, KALPETTA
ST 616/2009 of J.M.F.C.-I, MANANTHAVADY**

REVISION PETITIONER/ APPELLANT/ ACCUSED:

**BINDU BALAN, AGED 61 YEARS
D/O BALAN, C/O SUDHEER ASHA, AYSWARYA NIVAS
VYTHIRY P.O, WAYANAD DISTRICT.**

BY ADV. SRI.A.V. JAMES

RESPONDENTS/RESPONDENTS/ COMPLAINANT:

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. KOYA MOIDU, AGED 64 YEARS
S/O LATE ALI KOYA, MANGALASSERY HOUSE, VELLAMUNDA P.O.
WAYANAD DISTRICT.**

**R2 BY ADV. SRI.V.SHYAM
R1 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
09-01-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

OKB

K.HARILAL, J.

Crl.R.P. No.68 of 2014

Dated this the 9th day of January, 2014

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.214/2011 on the files of the court of the Sessions Judge, Kalpetta, Wayanad. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T.No.616/2009 on the files of the Judicial First Class Magistrate's Court-I, Mananthavady. According to the impugned judgment, the Revision Petitioner was sentenced to undergo simple imprisonment for one day till rising of the court and to pay to the complainant ₹4,00,000/- as compensation and in default to undergo simple imprisonment for 6 months.

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/2nd 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 2nd respondent. So also, it is found that the debt due to the 2nd 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 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 six months. The learned counsel for the 2nd respondent submits that the cheque was issued in the year 2009 and the revision petitioner had already availed of sufficient time to pay the cheque amount. So, a short time alone can be given to pay the compensation.

4. The Supreme Court, in the decision in **Kaushalya Devi Massand Vs. 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.

5. 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 six months, the revision petitioner is given six months time to pay the compensation. Consequently, this Revision Petition is allowed 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 compensation of ₹4,00,000/- (Rupees Four lakhs only) to the 2nd respondent/complainant within a period of six months from today under Section 357(3) of the Cr.P.C.

iii. The Revision Petitioner shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 08.7.2014 with sufficient proof to show payment of compensation.

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

v. If the revision petitioner is undergoing imprisonment in execution of the sentence imposed on her under the impugned judgment, she shall be released forthwith, if she is not required in any other case.

Sd/-
(K.HARILAL, JUDGE)

okb.