

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 23RD DAY OF OCTOBER 2013/1ST KARTHIKA, 1935

Crl.Rev.Pet.No. 2105 of 2013

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AGAINST THE JUDGMENT IN CRA 474/2011 of ADDITIONAL DISTRICT COURT,
KOZHIKODE- II DATED 25-07-2012**

**AGAINST THE JUDGMENT IN CC 692/2007 of JUDICIAL FIRST CLASS MAGISTRATE
COURT-IV,KOZHIKODE DATED 14-02-2011**

REVISION PETITIONER/APPELLANT/ACCUSED:

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MUHAMMAD ANWAR.V.P, AGED 34 YEARS,
S/O KUNHASSAN, VELICHAMPARAMBATH HOUSE,
AVADUKKA AMSOM DESOM, PERUVANNAMUZHI, KOYILANDI TALUK,
KOZHIKODE DISTRICT.**

**BY ADVS.SRI.K.P.SUDHEER
SRI.ARUN MATHEW VADAKKAN**

RESPONDENTS/RESPONDENTS/COMPLAINANT AND STATE:

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- 1. M/S.SHRIRAM TRANSPORT FINANCE CO. LTD.
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER BABU JOSE,
AGED 33 YEARS, S/O JOSEPH, SREEPADAM BUILDING,
CHEROOTTY ROAD, KOZHIKODE-673 002.**
 - 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**

BY SR. PUBLIC PROSECUTOR SRI.LIJU V.STEPHEN

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
23-10-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

AS

K. HARILAL, J.

Crl.R.P. No.2105 of 2013

Dated this the 23rd day of October, 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.474 of 2011 on the files of the II Additional Sessions Judge, Kozhikode. The above appeal was filed challenging the judgment finding the Revision Petitioner guilty of the said offence, passed in C.C.No.692 of 2007 on the files of the Judicial First Class Magistrate's Court-IV, Kozhikode. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment till rising of the court and to pay Rs.3,75,000/- (Rupees Three Lakhs Seventy Five Thousand only) to the complainant /1st respondent as compensation under Section 357(3) Cr.P.C. In default of

payment of compensation the Revision Petitioner shall undergo simple imprisonment for a period of three 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/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.P2 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 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.

4. 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.

5. Though notice had been served on the complainant/1st respondent he didn't enter appearance to contest the Revision Petition on merits. 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, I am inclined to grant six months time to pay the compensation. 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 compensation

of Rs.3,75,000/- (Rupees Three Lakhs Seventy Five Thousand only) to the complainant/1st respondent under Section 357(3) of Cr.P.C. within a period of six 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 23/04/2014 with sufficient proof to show payment of compensation .

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

The Criminal Revision Petition is disposed of accordingly.

Sd/- **K.HARILAL**
JUDGE

MJL