

(2013) 11 KL CK 0062

In the High Court Of Kerala

Case No : Criminal Rev. Petition No. 2187 of 2013

P.J. Joseph

APPELLANT

Vs

Kuttisankaraguptan and State of Kerala

RESPONDENT

Date of Decision : 07-11-2013

Acts Referred:

Citation : (2013) 11 KL CK 0062

Hon'ble Judges : K. Harilal, J

Bench : Single Bench

Advocate : P. Jayaram, for the Appellant; Liju V. Stephen, Public Prosecutor for R2, for the Respondent

Final Decision : Disposed Off

Judgement

K. Harilal, J.—This Revision Petition is filed challenging the concurrent findings of conviction entered and the sentence imposed on the Revision Petitioner for the offence punishable u/s 138 of the Negotiable Instruments Act, 1881 (for short, "the N.I. Act") in Criminal Appeal No. 103/12 on the files of the court of the I Additional Sessions Judge, Ad hoc-III, Palakkad. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T. No. 1837/09 on the files of the Judicial First Class Magistrate's Court, Ottapalam. 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 a compensation of Rs. 1,62,000/- to the complainant and in default to undergo simple imprisonment for 3 months. 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 u/s 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 at. Therefore, I am not inclined to re-appreciate entire evidence once again and I confirm the concurrent findings of conviction.

2. 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.

3. The Supreme Court, in the decision in Kaushalya Devi Massand Vs. Roopkishore Khore, held that the offence u/s 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 R. Vijayan Vs. Baby and Another, 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 u/s 138 of the N.I. Act, the compensatory aspect of remedy should be given much priority over punitive aspect. 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 five months, the revision petitioner is given five 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. 1,62,000/- (Rupees One lakh sixty-two thousand only) to the complainant/1st respondent within a period of five 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 07.4.2014 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.