

(2013) 08 KL CK 0053

High Court Of Kerala

Case No: Criminal Rev. Petition No. 1550 of 2013

Bipin T.K.

APPELLANT

Vs

M.D. Augustine and State of
Kerala

RESPONDENT

Date of Decision: Aug. 1, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 357(3)
- Negotiable Instruments Act, 1881 (NI) - Section 118(a), 138, 139

Hon'ble Judges: K. Harilal, J

Bench: Single Bench

Advocate: R. Bindu Sastha Mangalam and Sri. Prasanth M.P, for the Appellant; Seena Ramakrishnan, Public Prosecutor, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

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. 574/2010 on the files of the court of the 3rd Additional Sessions Judge, Kozhikode. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T. No. 278/2006 on the files of the Judicial First Class Magistrate's Court-I, Kozhikode. According to the judgment passed by the trial court, the Revision Petitioner was sentenced to undergo simple imprisonment for one day till rising of the court and to pay to the complainant a compensation of Rs. 50,000/- u/s 357(3) Cr. P.C. and in default to undergo simple imprisonment for two months. The appeal was dismissed confirming the conviction and the sentence. 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. 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.

2. 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 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 six months, the revision petitioner is given three months" time to pay the compensation to the complainant. 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 Rs. 50,000/- (Rupees Fifty thousand only) to the complainant/1st respondent as compensation within a period of three 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 31.10.2013 with

sufficient proof to show payment of compensation.

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

v. If the Revision Petitioner is undergoing imprisonment in execution of the sentence imposed on him under the impugned judgment, he shall be released forthwith, if he is not required in any other case.

The Criminal Revision Petition is disposed of accordingly.