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**Chandran Vs. Hari**

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**SooperKanoon Citation** : sooperkanoon.com/1089126

**Court** : Kerala

**Decided On :** Sep-06-2013

**Judge** : Honourable Mr.Justice K.Harilal

**Appellant** : Chandran

**Respondent** : Hari

**Judgement** :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL FRIDAY, THE6H DAY OF SEPTEMBER201315TH BHADRA, 1935 Crl.Rev.Pet.No. 1554 of 2013 () ---------- AGAINST THE

JUDGMENT
IN CRL.A. 288/2010 of ADDL.SESSIONS COURT-I,MAVELIKKARA DATED0405-2011 AGAINST THE

JUDGMENT
IN ST1082008 of J.M.F.C.-II, HARIPAD DATED1405-2010. REVISION PETITIONER(S)/APPELLANT/ACCUSED: ---------- CHANDRAN, AGED61YEARS, S/O.PARAMESWARAN, KANJOOR VEEDU, KARICHAL, PAYIPPAD P.O., ALAPPUZHA DISTRICT. BY ADV. SMT.S.L.SYLAJA RESPONDENTS/RESPONDENTS/COMPLAINANT(S): ---------- 1. HARI, AGERD41YEARS, S/O.RAGHAVAN,

MANNOOR SREE BHAVANAM, PALLIPAD P.O, KARTHIKAPPALLY VILLAGE ALAPPUZHA DISTRICT, PIN688001.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. R1 BY ADV. SRI.R.SUNIL KUMAR R1 BY ADV. SMT.A.SALINI LAL R2 BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON0609-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: K. HARILAL, J.

---------- Crl.R.P. No. 1554 of 2013 ---------- Dated this the 6th day of September, 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.288/10 on the files of the Additional Sessions Judge-I, Mavelikara. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T.No.108/08 on the files of the Judicial First Class Magistrate's Court-II, Haripad. According to the impugned judgment, the Revision Petitioner is sentenced to undergo Crl.R.P. No. 1554 of 2013 -:

2. :- simple imprisonment for a period of three months and to pay a fine of Rs.23,000/-. In default of payment of fine, the revision petitioner shall undergo simple imprisonment for a further period of one month. The fine amount, if realised, shall be paid to the complainant/1st respondent as compensation under Sec.357(3) of the Code of Criminal Procedure.

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 Crl.R.P. No. 1554 of 2013 -:

3. :- 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.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. 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 fine within three months.

4. Similarly, the substantive sentence imposed on the Crl.R.P. No. 1554 of 2013 -:

4. :- 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 put put in great hardship.

5. The Supreme Court, in the decision in Kaushalya Devi Massand v. Roopkishore (AIR 2011 SC2566, 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) KLT355, 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 Crl.R.P. No. 1554 of 2013 -:

5. :- 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 one day till rising of the court. 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 `23,000/- (Rupees twenty three thousand only) within a period of three months from today and the same shall be given to the 1st respondent/complainant as compensation under Sec.357(1) (b) of the Cr.P.C. iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 6/12/2013 with sufficient proof to show payment of compensation. iv. In default, the Revision Petitioner shall undergo Crl.R.P. No. 1554 of 2013 -:

6. :- simple imprisonment for a period of one month month. The Criminal Revision Petition is disposed of accordingly. Sd/- (K. HARILAL, JUDGE) Nan/ //true copy// P.S. to Judge

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