

**Pious George Vs. Ravikumar**

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**Court :** Kerala

**Decided On :** Oct-30-2013

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

**Appellant :** Pious George

**Respondent :** Ravikumar

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL WEDNESDAY, THE30H DAY OF OCTOBER20138TH KARTHIKA, 1935 Crl.Rev.Pet.No. 2113 of 2013 ()  
----- AGAINST THE

JUDGMENT

IN CRA3042011 of ADDL.D.C. & SESSIONS COURT, N.PARAVUR DATED0802-2013 AGAINST THE

JUDGMENT

IN ST2242010 of J.M.F.C. - II, N. PARAVUR DATED2604-2011 REVISION PETITIONER/APPELLANT/ACCUSED: ----- PIOUS GEORGE, AGED43YEARS, S/O.GEORGE, POOKKAKARAN VEEDU, ERUMATHALA KARA, ERUMATHALA P O, ALUVA. BY ADV. SRI.JAISON JOSEPH RESPONDENTS/COMPLAINANT(S)/STATE: -----

1. RAVIKUMAR, S/O.KUMARAN, KANAKKANMATTIL VEEDU, (CHINJU

NIVAS)KIZHAKKEPRAM KARA, KOTTUVALLY, NORTH PARAVUR.

2. STATE OF KERALA, REP BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. R2 BY PUBLIC PROSECUTOR SRI.LIJU V. STEPHEN THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON3010-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: K. HARILAL, J.

----- Crl.R.P. No. 2113 of 2013  
----- Dated this the 30th 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.304/11 on the files of the Additional District & Sessions Judge, N. Paravur. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T. No.224/10 on the files of the Judicial First Class Magistrate's Court-II, N. Paravur. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for Crl.R.P. No. 2113 of 2013 :-

2. :- one year and is directed to pay a fine of Rs.2,42,000/-. In default of payment of fine, the accused shall undergo simple imprisonment for three months more. If the fine amount is realised, the whole amount shall be given to the complainant as compensation under Sec.357(1) of the Cr.P.C.

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 Crl.R.P. No. 2113 of 2013 -:

3. :- 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 six months.

4. Though notice had been served on the 1st respondent/complainant, he did not enter appearance to contest this revision petition on merits. Crl.R.P. No. 2113 of 2013 -:

4. :- 5. Similarly, the substantive sentence imposed on the 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 in great hardship.

6. 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.

7. Having regard to the nature and gravity of the Crl.R.P. No. 2113 of 2013 -:

5. :- 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. Similarly, the substantive sentence of imprisonment is reduced and modified to simple imprisonment for one day till rising of the court. The sentence imposed on the revision petitioner will stand modified as follows: i. The Revision Petitioner shall undergo simple imprisonment for one day till rising of the court. ii. The Revision Petitioner shall pay a fine Rs.2,42,000/- (Rupees two lakhs and forty two thousand only) within a period of six months from today and the same shall be given to the complainant/1st respondent as compensation under Sec.357(1) 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 2/5/2014 with sufficient proof to show payment of compensation . Crl.R.P. No. 2113 of 2013 -:

6. :- 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) Nan/ //true copy// P.S. to Judge Crl.R.P. No. 2113 of 2013 -:

7. :-

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