

**Sameesh Vs. the State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/1165020](http://sooperkanoon.com/1165020)

**Court :** Kerala

**Decided On :** Sep-23-2014

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

**Appellant :** Sameesh

**Respondent :** The State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL TUESDAY, THE 23D DAY OF SEPTEMBER 2014 1ST ASWINA, 1936 Crl.Rev.Pet.No. 1646 of 2014 ()  
----- AGAINST THE

JUDGMENT

IN CRL.A. 752/2010 of II ADDITIONAL SESSIONS JUDGE, TRIVANDRUM DATED 1906-2014 AGAINST THE

JUDGMENT

IN ST22132007 of J.M.F.C.-II, VARKALA DATED 2509-2010 REVISION PETITIONER(S)/APPELLANT/ACCUSED: -----  
SAMEESH, AGED 59 YEARS, S/O. ASANAR, LATHA VILLA, CHERUKUNNAM DESOM, MAITHANAM ROAD, VARKALA VILLAGE, PIN-695 141. BY ADVS.SRI.C.R.VIJAYAKUMARAN PILLAI SRI.S.JAYAKRISHNAN (VARKALA) SRI.A.CHANDRA BABU SRI.R.SANTHOSH (VARKALA) SMT.S.V.HARITHA

RESPONDENT(S)/COMPLAINANTS: ----- 1. THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. VAMADEVAN, AGED 75 YEARS, S/O. BHASKARAN, PRIYA HOUSE, VILABH BHAGOM DESOM, VETTOOR VILLAGE, THIRUVANANTHAPURAM-695307. BY PUBLIC PROSECUTOR SRI. GITHESH.R. THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 23/09-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: K. HARILAL, J.

----- Crl.R.P. No. 1646 of 2014  
----- Dated this the 23rd day of September, 2014

## 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.752/2010 on the files of the Additional Sessions Judge-II, Thiruvananthapuram. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T.No.2213/2007 on the files of the Judicial First Class Magistrate's Court-II, Varkala. According to the impugned judgment, the Revision Crl.R.P. No. 1646 of 2014 -:

2. :- Petitioner is sentenced to undergo simple imprisonment for one day till rising of the court and to pay a fine of `4,20,000/- and in default, to undergo simple imprisonment for six 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/2nd 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 2nd respondent. So also, it is found that the debt due to the 2nd CrI.R.P. No. 1646 of 2014 -:

3. :- 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 compensation within six months.

4. The Supreme Court, in the decision in Kaushalya Devi Massand v. Roopkishore (AIR 2011 SC CrI.R.P. No. 1646 of 2014 -:

4. :- 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) 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.

5. 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.

6. The learned counsel for the revision petitioner urged for converting the fine to compensation directly payable to the complainant/2nd respondent. Having Crl.R.P. No. 1646 of 2014 -:

5. :- regard to the nature and gravity of the offence, I am of the opinion that fine can be converted to compensation payable directly to the complainant/2nd respondent and I do so. 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 `4,20,000/- (Rupees Four lakhs and twenty thousand only) to the 2nd respondent/complainant as compensation 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 23/3/2015 with sufficient proof to show payment of compensation . iv. In default, the Revision Petitioner shall undergo simple imprisonment for a period of six Crl.R.P. No. 1646 of 2014 -:

6. :- months. v. Warrant, if any, is pending against the revision petitioner, the same shall be kept in abeyance for a period of six months from today. The Criminal Revision Petition is disposed of accordingly. Sd/- (K. HARILAL, JUDGE) Nan//true copy// P.S. to Judge Crl.R.P. No. 1646 of 2014 -:

7. :-

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