

**K.S.Mini Vs. Sudeerkumar**

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**SooperKanoon Citation :** [sooperkanoon.com/1165179](http://sooperkanoon.com/1165179)

**Court :** Kerala

**Decided On :** Sep-26-2014

**Judge :** Honourable Mr.Justice a.M.Shaffique

**Appellant :** K.S.Mini

**Respondent :** Sudeerkumar

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL FRIDAY, THE 26TH DAY OF SEPTEMBER 2014 4TH ASWINA, 1936 Crl.Rev.Pet.No. 1630 of 2014 ()  
----- AGAINST THE

JUDGMENT

IN CRL.A. 179/2013 of III ADDITIONAL DISTRICT & SESSIONS COURT, THODUPUZHA DATED 31/07-2014 AGAINST THE

JUDGMENT

IN ST702012 of J.M.F.C.-II, THODUPUZHA DATED 16/11-2013 REVISION PETITIONER(S)/APPELLANT/ACCUSED: -----  
K.S.MINI, AGED 34 YEARS, W/O.SANAL, NELLIPARAMBIL HOUSE, KAPPILAMTHODUM BHAGOM, MANAKKADU KARA, MANAKKADU VILLAGE, THODUPUZHA TALUK. BY ADVS.SRI.R.KRISHNAKUMAR (CHERTHALA) SMT.TINY THOMAS RESPONDENT(S)/RESPONDENTS/STATE &

COMPLAINANT: ----- 1. SUDEERKUMAR,  
AGED 38 YEARS, NOBLE FINANCE COMPANY, THODUPUZHA, PULLIKKAL  
VEETIL, KARIKKODE VILLAGE, THODUPUZHA TALUK.

2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH  
COURT OF KERALA, ERNAKULAM. R2 BY PUBLIC PROSECUTOR SRI.  
GITHESH.R. THIS CRIMINAL REVISION PETITION HAVING COME UP FOR  
ADMISSION ON 26/09-2014, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING: K. HARILAL, J.

----- Crl.R.P. No. 1630 of 2014  
----- Dated this the 26th 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.179/2013 on the files of the III Additional District & Sessions Judge, Thodupuzha. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T. No. 70/2012 on the files of the Judicial First Class Magistrate's Court-II, Thodupuzha. According to the impugned judgment, the Revision Crl.R.P. No. 1630 of 2014 -:

2. :- Petitioner is sentenced to undergo imprisonment till rising of the court and to pay a fine of `1,32,500/-. In default of payment of fine, to undergo simple imprisonment for a period of two 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/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 is found that the debt due to the 1st respondent was a legally enforceable debt and Ext.P.6 Crl.R.P. No. 1630 of 2014 -:

3. :- 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 SC2566, held that the offence under Section 138 of the N.I. Act is almost in the nature of civil wrong which has Crl.R.P. No. 1630 of 2014 -:

4. :- 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. 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. CrI.R.P. No. 1630 of 2014 -:

5. :- ii. The Revision Petitioner shall pay a fine of `1,32,500/- (Rupees One lakh thirty two thousand and five hundred only) and the same shall be given to the 1st respondent/complainant as compensation under Sec.357(1)(b) of the Cr.P.C. 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 26/3/2015 with sufficient proof to show payment of compensation. iv. In default, the Revision Petitioner shall undergo simple imprisonment for a period of two months. The Criminal Revision Petition is disposed of accordingly. Sd/- (K. HARILAL, JUDGE) Nan/ //true copy// P.S. to Judge

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