

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

CrI.MC.No. 164 of 2014 ()

CrI.Rev.Pet 135/2013 of HIGH COURT OF KERALA
CC NO.704/2010 OF JUDICIAL FIRST CLASS MAGISTRATE, HARIPAD

PETITIONER/REVISION PETITIONER/ACCUSED:

THANKAMMA, AGED 61 YEARS
W/O. RETNAKARAN, SIVAMANGALATH HOUSE
KANDALLOOR THEKKU, KANDALLOOR VILLAGE
ALAPPUZHA DISTRICT.

BY ADVS.SRI.C.V.MANUVILSAN
SRI.G.SUDHEER (THURAVOOR)

RESPONDENTS/COMPLAINANT:

1. SUMADATHAN, AGED 46 YEARS
S/O. KUNCHANNAN, VELLIKKARA VEEDU, MUTHUKULAM THEKKU
MUTHUKULAM VILLAGE, ALAPPUZHA DISTRICT-690560.

2. STATE OF KERALA
REPRESENTED THROUGH THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA AT ERNAKULAM-682031.

R1 BY ADV. SRI.SUNIL NAIR PALAKKAT
R1 BY ADV. SRI.K.N.ABHILASH
BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE. P.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
09-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 164 of 2014 ()

APPENDIX

PETITIONERS' ANNEXURES:

ANNEXURE A1- A TRUE PHOTOCOPY OF THE ORDER OF THIS HON'BLE COURT IN
CRL.RP.NO. 135/2013 DATED 16-01-2013.

ANNEXURE A2- A TRUE PHOTOCOPY OF THE STATEMENT ISSUED BY THE
COMPLAINANT ACKNOWLEDGING RECEIPT OF AMOUNT OF FINE ORDERED TO BE
PAID AS PER FINAL ORDER DISPOSING OF THE REVISION PETITION.

RESPONDENTS' ANNEXURES: NIL

//TRUE COPY//

P.A. TO JUDGE

smv

P. UBAID,J.

Crl.M.C No.164 of 2014

Dated this the 9th day of February, 2015

O R D E R

The petitioner herein stands convicted and sentenced under Section 138 of the Negotiable Instruments Act. The substantive sentence is only a sentence of imprisonment till rising of the court. There is also fine sentence of Rs.50,000/- and there is a further direction that the entire amount of fine, if realised, shall be paid as compensation to the complainant. Instead of remitting the amount in court as fine, the petitioner directly made payment of the the amount to the complainant on the bona fide belief that such payment will discharge the liability. Now the petitioner seeks a direction from this Court to the court below to record payment of fine amount as directed by this Court in **Beena v. Balakrishnan Nair and Another** [2010(2) KLT 1017].

2. Of course the decision in **Beena v. Balakrishnan Nair** (supra) is not a precedent. In the given situation in that case, this court made a direction to the court below to record payment appropriately. Here also there is an instance of payment of compensation inadvertently made by the accused to the complainant. The proper and legal course is to remit the fine amount in court and

the court will make payment of compensation to the complainant. By mistake the accused happened to make payment of compensation to the complainant directly. As required by this Court, the complainant has filed affidavit to the effect that he has received the entire amount of Rs.50,000/- and that nothing remains to be paid. In such a situation, a direction can be given to the court below in view of the decision in **Beena v. Balakrishnan Nair**. However the petitioner will have to surrender before the learned Magistrate immediately and serve out the sentence till rising of the court. In view of the affidavit filed by the complainant admitting receipt of the amount of compensation, the court below can be directed to make necessary entries appropriately in the registers, regarding payment of fine and payment of compensation.

In the result, the Crl.M.C. is allowed. The court below is hereby directed that payment of fine and payment of compensation as per the judgment of the trial court, confirmed by this Court in Revision Petition No135 of 2013 shall be made appropriately in the registers when the petitioner surrenders before the learned Magistrate and makes application to that effect. The petitioner will, without delay surrender before the learned magistrate and serve out the sentence.

Sd/-
P. UBAID, JUDGE

//true copy//

P.A. To Judge

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