

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

Cr1.MC.No. 4461 of 2014 ()

AGAINST THE ORDER/JUDGMENT IN CRA 163/1999 of D.C. & SESSIONS
COURT, KOTTAYAM DATED 22-12-2000

AGAINST THE ORDER/JUDGMENT IN CC 55/1997 of J.M.F.C.-II,
KANJIRAPPALLY DATED

PETITIONER(S) / (ACCUSED) :

R.S.MOHAMMED KABEER,
THENNAMMACKAL HOUSE,
POOTHAKUZHY P.O.,
KANJIRAPPALLY.

BY ADV.SRI.T.M.ABDUL LATIFF

RESPONDENT(S) / (COMPLAINANT & STATE) :

1. C.K.VISWANATHAN,
KUMBUKAL, CHIRAKKADAVU, VADAKKUM BHAGOM,
KUNNAMBHAGAM - 686 520.
2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
13-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

:2:

Cr1.MC.No. 4461 of 2014 ()

APPENDIX

PETITIONER(S) ' EXHIBITS:

ANNEXURE-A1: TRUE COPY OF THE JUDGEMENT PASSED BY THE SESSIONS COURT,
KANJIRAPPALLY IN CRL.A.NO.163 OF 1999.

ANNEXURE-A2: TRUE COPY OF THE JUDGEMENT PASSED BY THIS HONOURABLE
COURT IN CRL.R.P NO.316 OF 2001

ANNEXURE-A3: TRUE COPY OF THE COMPOUNDING APPLICATION SIGNED BY THE
PETITIONER AND THE IST RESPONDENT DATED 7.2.2014

RESPONDENT(S) ' EXHIBITS: NIL

//True Copy//

P.A. to Judge

SS

K. RAMAKRISHNAN, J.

Crl.M.C. No.4461 of 2014

Dated this the 13th day of November, 2015

ORDER

This is an application filed by the petitioner who is accused in C.C.No.55/1997 on the file of the Judicial First Class Magistrate Court-II, Kanjirappally, directed the court below to recall the warrant issued against the petitioner and record satisfaction of the payment of compensation and record compliance of the satisfaction of sentence under Section 482 of the Code of Criminal procedure.

2. It is alleged in the petition that the petitioner is the accused in C.C.No.55/1997 on the file of the Judicial First Class Magistrate Court-II, Kanjirappally and the case was filed by the first respondent against the petitioner alleging offence under Section 138 of the Negotiable Instruments Act. Court below found him guilty and sentenced him to undergo simple imprisonment for six months and also to pay a fine of ₹50,000/-, in default to undergo simple imprisonment for three months. It is also

ordered that, if the fine amount is realised, an amount of ₹45,000/- be paid to the complainant as compensation under Section 357(1)(b) of the Code of Criminal Procedure. The petitioner filed Crl.Appeal No.163/1999 before the Sessions Court, Kottayam and the Sessions Court by Annexure-A1 order allowed the appeal in part, confirming the order of conviction but modifying his sentence directing the petitioner to pay an amount of ₹45,000/- as compensation under Section 357(3) of the Code of Criminal Procedure. This was challenged by the petitioner before this court by filing Crl.R.P.No.316/2001 and this court, by Annexure-A2 order, dismissed the revision. Since the petitioner did not pay the amount, warrant was issued against him and the petitioner moved this court by filing Annexure-A3 to record compounding. Hence the petition.

3. Though notice was issued to the first respondent, he did not appear. Heard the counsel for the

petitioner Sri.Latiff and Smt. Seena Ramakrishnan, Public Prosecutor appearing for the State/ 2nd respondent. Since the revision has already been disposed of, it is not possible for this court invoking Section 482 of the Code of Criminal Procedure to record compounding and acquit the accused as claimed by the petitioner.

4. When the petition came up for hearing today, the counsel for the petitioner submitted that the entire amount due as per the judgment has been paid directly to the complainant and since it was paid out of court, the court below will not accept the payment, unless a direction has been given by this court.

5. In the decision reported in **Beena v. Balakrishnan Nair (2010(2) KLT 1017)** and **Sivankutty v. John Thomas and Another (2012 (3) KHC 676)**, this court has held that, even if the amount has been paid out of court and if document has been produced before the court

below to prove this fact, to the satisfaction of the court below, then court below can record the same in the respective registers and dispose of the case. So if the petitioner surrenders before the court below and produces document showing payment of entire amount as per the judgment along with complainant and if the complainant acknowledges the same and the court below is satisfied with the payment, then court below is directed to record payment of the same in the respective fine register and pass appropriate orders in view of the principles laid down in the decisions cited (supra).

The petitioner is directed to surrender before the court below on 14.12.2015 and produce the document if any mentioned above and satisfy the court regarding the payment of the amount as per the judgment and also produce the complainant to acknowledge the payment before the court, till then, the coercive steps if any taken by

the court below is directed to be kept in abeyance.

With the above direction and observation, the criminal miscellaneous case is disposed of. Office is directed to communicate this order to the court below immediately.

Sd/-
K. Ramakrishnan, Judge

//True Copy//

P.A. to Judge

SS