

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

Crl.Rev.Pet.No. 176 of 2015

CMP 3071/2012 IN UNNUMBERED S.T. of J.M.F.C., WADAKKANCHERY

CRL.REVISION PETITIONER/PETITIONER/COMPLAINANT:

ROJAN K. DAVIS
KANNANAKKAL HOUSE, MUNDATHICODE, ARYAMPADAM VILLAGE
THALAPPILLY TALUK, THRISSUR DIST

BY ADVS.SRI.MADHU RADHAKRISHNAN
SRI.M.D.JOSEPH

RESPONDENT(S)/RESPONDENTS:

1. C.M.PUSHKARAN
S/O.MADHAVAN, CHITTEZHICKARA HOUSE, PUTHURUTHY VILLAGE
CHITTEZHICKARA DESOM, THALAPPILLY TALUK,
THRISSUR DIST - 680 009.

2. STATE OF KERALA
REP BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 10-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No.176 of 2015

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Dated this the 10th day of June, 2015

ORDER

The petitioner is the petitioner in C.M.P.No.3071/12 on the files of the Judicial First Class Magistrate's Court, Wadakkanchery, filed under Section 142(b) of the Negotiable Instruments Act, 1881. He is the complainant in a complaint filed along with the above petition alleging the offence punishable under Section 138 of the Negotiable Instruments Act against the respondent. The averment in the above petition was that petitioner has sent statutory notice to the accused in time; but the postal acknowledgment card has not been received by the petitioner in time. Therefore, he filed a complaint before the postal authorities requiring them to issue receipt which would prove the receipt of the notice by the accused. The postal authorities, by letter dated 16.05.2012, informed the

petitioner that the accused had received the cover containing notice on 15.02.2012. The petitioner was under a bona fide impression that the complaint can be filed only after receiving the acknowledgment card. It is also stated that in the meantime, he was bed ridden due to his illness also. Thus, there was a delay of 74 days in filing the complaint. According to the petitioner, there was no wilful negligence or default from his part in not filing the complaint within the time.

2. The respondent, vehemently, opposed the above said application to condone delay in filing the complaint. According to the respondent, the petitioner has got ample time after receipt of the reply from the postal authorities. After considering the rival pleas, the court below dismissed the application on the finding that there is no sufficient reason to condone delay. The legality of the findings whereby the court below dismissed the above application is under challenge in this revision petition.

3. Heard the learned counsel for the petitioner in

extensio. The learned counsel advanced arguments assailing the findings of the court below whereby the application was dismissed. In support of the argument, the learned counsel drew my attention to the letter issued by the postal department dated 16.5.2012 to the petitioner stating that the accused received the notice on 13.2.2012.

4. Going by the impugned order, it is seen that the court below has dismissed the application mainly on the reason that no medical certificates has been produced to prove that he was bed ridden as contended by him. It appears that the court below was not satisfied with the reason for delay. But, I am inclined to take a different view in the light of the decisions laid down by the Apex Court as regards the nature of prosecution under Section 138 of the Negotiable Instruments Act.

5. The Supreme Court, in the decision in **Kaushalya Devi Massand v. Roopkishore** (AIR 2011 SC 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) KLT 355), 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.

6. In the light of the above decisions, I find that it is not proper to dismiss the petition to condone delay in a rigid manner, particularly, if the complainant is deprived of an opportunity to prosecute the accused, he will be put to heavy financial loss and hardship. In the instant case, the letter, dated 16.5.2012, issued by the postal department shows that the petitioner was awaiting for the reply from the postal department which would show the date of receipt of the notice by the accused. Therefore, I am inclined to believe that he was awaiting on a bona fide impression that the complaint can be filed only after the receipt of the reply

notice. It is true that no medical evidence had been adduced to show that he was bed ridden. But, considering the entire facts and circumstances of the case, I am inclined to take a lenient view and the petitioner is given another opportunity to proceed with the complaint.

7. Consequently, the impugned order under challenge will stand set aside on terms. The petitioner shall pay a cost of ₹2,000/- to the Trial Court within a period of one month from today. If the petitioner pays the cost and re-submit the complaint within one month, the court below shall accept the same on the files and proceed in accordance with law. In the event of failure to pay the cost, the impugned order will stand in force.

The revision petition is allowed accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.Ato Judge