

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

Cr1.Rev.Pet.No. 257 of 2015

AGAINST THE JUDGMENT IN ST 1739/2014 of J.M.F.C.-I,
MAVELIKKARA DATED 22-11-2014

REVISION PETITIONER/COMPLAINANT:

C.G.SUNIL,
S/O.CHANDRAN, SEENA NIVAS, VADAKKUMBHAGOM,
ERAVIPURAM.P.O, KOLLAM.

BY ADVS.SRI.K.SHAJ
SRI.SAJJU.S
SRI.RENJIT GEORGE
SMT.ANJU MOHAN
SRI.S.K.SUJITH KRISHNA

RESPONDENTS/STATE & ACCUSED:

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.

2. KRISHNAKUMAR,
KECHERI MADAM, ELANJI NADA P.O,
CHENGANNOOR-681121.

R1 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 17-07-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No. 257 of 2015

Dated this the 17th day of July, 2015

ORDER

The petitioner is the complainant in S.T. No.1739 of 2014 on the files of the Judicial First Class Magistrate's Court-I, Mavelikara. The above complaint was filed by him against the 2nd respondent herein alleging the offence punishable under Sec.138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act'). The allegation in the complaint is that the cheque issued by the 2nd respondent to the petitioner, in discharge of a legally enforceable liability, was dishonoured and returned for want of sufficient fund. Initially, the case was filed before the Chief Judicial Magistrate's Court, Kollam. Then, it was returned for

want of jurisdiction on 18/9/2014 and the petitioner re-presented the case before the Judicial First Class Magistrate's Court, Mavelikara, on 16/10/2014 and was numbered as S.T.No.1739 of 2014. Then the case was adjourned to 22/11/2014 for appearance and for taking steps. According to the petitioner, unfortunately, the Clerk of the counsel failed to note down the correct posting date of the case and thereby, the case happened to be dismissed for non-representation by the impugned order under Sec.204 (4) of the Cr.P.C. This order is under challenge in this revision petition.

2. The learned counsel further submits that there was no wilful negligence or laches on the part of the petitioner or his counsel in not appearing before the court below when the case was called on 22/11/2014. It was so happened due to the omission on the part of the Clerk attached to the counsel for the petitioner before the lower court. The learned counsel further submits that if he is not allowed to proceed with the

complaint, he will be put to heavy financial loss and hardship. The learned counsel for the petitioner prayed for an opportunity to proceed with the complaint.

3. Going by the impugned order, it is seen that on 22/11/2014, when the case was called for hearing, neither the complainant; nor the counsel was present before the court. So also, steps were not taken as directed by the court. Consequently, the court below dismissed the petition under Sec.204(4) of the Cr.P.C. I do not find any fault on the part of the court below in dismissing the complaint under Sec.204(4) of the Cr.P.C., when there was no representation.

4. 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)

CLT 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.

5. In view of the above decisions, I find that if the petitioner is precluded from prosecuting the 2nd respondent, certainly he will be put to heavy financial loss and hardship.

6. Thus, I am taking a lenient view in a different perspective. The petitioner can be given an opportunity to proceed with the complaint on terms. The impugned order will stand set aside on condition that the petitioner pays a cost of ₹3,000/- (Rupees three thousand only) to the court below within a period of 45 days from today. On compliance of the said condition, the court below shall restore the complaint on the files and proceed in accordance with

law. Needless to say, in event of failure, the impugned order will stand in force.

This revision petition is disposed of in the above terms.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge