

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

Cr1.Rev.Pet.No. 334 of 2015

AGAINST THE ORDER IN ST 2539/2014 of J.M.F.C.-I, KANNUR
DATED 07-01-2015.

REVISION PETITIONER(S)/COMPLAINANT:

DR.SACHEENDRAN, AGED 44 YEARS,
S/O. NANU, MEDICAL PRACTITIONER,
MAYOOKHAM, KOTTAYAM MALABAR,
KOOHUPARAMBA, KANNUR DISTRICT.

BY ADVS.SRI.K.C.SANTHOSHKUMAR
SMT.K.K.CHANDRALEKHA

RESPONDENT(S)/STATE & ACCUSED:

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM-682 031.
2. ROSE BEENA JOHN, W/O. JOHN ROZARIO,
KOROTH HOUSE, NEAR CSI CHURCH,
KANNUR DISTRICT-670 001.

R1 BY PUBLIC PROSECUTOR SMT. MADHU BEN.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 21-05-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.334 of 2015

Dated this the 21st day of May, 2015

ORDER

The revision petitioner is the complainant in S.T.C.No.2539 of 2014 on the files of the Judicial First Class Magistrate's Court-I, Kannur. The above complaint was filed alleging the offence punishable under Sec.138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act') against the 2nd respondent/accused. The said complaint was originally filed before the Judicial First Class Magistrate's Court, Kuthuparamba, cognizance was taken and process was issued to the accused. However, the complaint was returned for lack of jurisdiction in view of the decision reported in Dashrath Rupsingh Rathod v. State of

Maharashtra and another [2014 (3) KHC 362 (SC)] and the same was re-presented before the Judicial First Class Magistrate's Court-I, Kannur, the court which passed the impugned order.

2. According to the petitioner/ complainant, the complaint was registered as Crl.M.P.No.5481 of 2014 and was ordered to be posted to 8/10/2014. Since there was no sitting on 8/10/2014, the case was re-posted to 7/11/2014. On 7/11/2014, the complaint was posted to 7/1/2015. However, no order had been passed taking the complaint on file which would enable the counsel for the revision petitioner to pay the requisite batta or to take any other steps.

3. However, on 7/1/2015, it is learnt by the petitioner that the case was taken up as S.T.C. No.2539 of 2014 and the name of the earlier counsel alone was called. Since the learned counsel for the petitioner was waiting for the turn of Crl.M.P.No. 5481 of 2014 being taken up, there was no occasion to make any appearance before the Judicial First Class

Magistrate's Court-I, Kannur when the case bearing S.T.C.No.2539 of 2014 was taken up. Thus, the complaint filed by the petitioner was dismissed by the impugned order stating that the complainant was absent, no representation and no batta paid.

4. Heard the learned counsel for the revision petitioner.

5. The learned counsel for the revision petitioner advanced arguments assailing the findings whereby the court below dismissed the complaint under Sec.204(4) of the Cr.P.C. The sum and substance of the arguments is that the procedure adopted by the court below for taking cognizance of the offence, after re-numbering the case, is irregular and unsustainable and that caused to the dismissal of the complaint, though there was no wilful negligence or default on the part of the complainant.

6. Going by the impugned order, it is seen that, when the case was called, the complainant was absent and there was no representation for him. So

also, no batta was paid to issue summons against the accused. This fact is not challenged in this revision petition. Therefore, I find no further enquiry needs to be made in this respect.

7. 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.

8. In view of the above decisions, I find that if the revision petitioner is deprived of an opportunity to

proceed with the complaint against the 2nd respondent/accused, certainly, he will be put to great financial loss and hardship. In this view of the matter, the revision petitioner shall be given a further opportunity to proceed with the complaint.

9. Consequently, the impugned order under challenge will stand set aside. The court below shall restore the complaint on its files and proceed in accordance with law.

10. The revision petitioner/complainant shall appear before the court below, in person or by counsel, on 29/6/2015.

The Criminal Revision Petition is disposed of accordingly.

Sd/-
(K. HARILAL, JUDGE)

Nan/

//true copy//

P.S. to Judge