

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYAISHTA, 1937

Crl.Rev.Pet.No. 437 of 2015 ()

AGAINST THE JUDGMENT IN CRL.A 33/2007
OF ADDL.DISTRICT & SESSIONS COURT(ADHOC)-III, KOLLAM DATED 18-08-2012
AGAINST THE JUDGMENT IN CC 33/2006
OF JUDICIAL FIRST CLASS MAGISTRATE COURT.-III, KOTTARAKKARA, KOLLAM
DATED 21-12-2006

REVISION PETITIONER/RESPONDENT/COMPLAINANT :

S.NANDAKUMAR
S/O.SREEDHARAN NAIR, AGED 52
PARAMPU MADAM, VILANGARA
NELLIKUNNAM P.O., UMMANNOOR VILLAGE
KOTTARAKKARA TALUK, KOLLAM.

BY ADV. SRI.K.R.SUNIL

RESPONDENTS/ACCUSED/RESPONDENTS/STATE :

1. HARILAL
S/O.BALAKRISHNAN, HOUSE NO.47, VINAYAKA NAGAR
KARAMANA, THIRUVANANTHAPURAM-695 001.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA.

R1 BY ADVS. SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH
SRI.RAAJESH S.SUBRAHMANIAN
R2 BY PUBLIC PROSECUTOR SRI. REJI JOSEPH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 12-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Mn

B.KEMAL PASHA, J.

.....
CRL.R.P. No.437 of 2015
.....

Dated this the 12th day of June, 2015

ORDER

The complainant in C.C.No.33 of 2006 of the Judicial First Class Magistrate's Court-III, Kottarakkara has come up in revision challenging the judgment passed by the Additional Sessions Judge-III, Kollam in Crl.A.No.33 of 2007.

2. Alleging an offence under Section 138 of the Negotiable Instruments Act, the petitioner herein had filed a complaint before the Judicial First Class Magistrate's Court-III, Kottarakakra, which was taken cognizance of as C.C.No.33 of 2006. After a full-fledged trial, the learned Magistrate found the first respondent herein guilty of the offence under Section 138 of the N.I. Act, convicted him thereunder and sentenced him to undergo simple imprisonment for 30 days and ordered him to

pay a compensation of ₹3 lakhs to PW1, who is the petitioner herein.

3. Challenging the conviction and sentence, the first respondent herein, who is the accused, had preferred Crl.A.No.33 of 2007 before the Sessions Court, Kollam. The Criminal Appeal was heard and disposed of by the Additional Sessions Judge-III, Kollam through the impugned order. It seems that the learned Additional Sessions Judge, through the impugned order, has upheld the conviction passed by the learned Magistrate; at the same time, interfered with the sentence. Substantive sentence of imprisonment for 30 days was taken away and a sentence of imprisonment till the rising of the court was imposed. At the same time, no default sentence is imposed for the compensation to be paid.

4. Heard the learned counsel for the revision petitioner, the learned counsel for the first respondent and the learned Public Prosecutor for the 2nd respondent.

5. Much discussion is not required to conclude that the course adopted by the learned Additional Sessions Judge in the impugned judgment cannot be appreciated in any manner. It seems that the learned Magistrate had imposed a sentence of simple imprisonment for 30 days and also ordered payment of compensation under Section 357(3) Cr.P.C. It is true that the learned Magistrate had not imposed any default sentence for the payment of compensation. At the same time, when the appellate authority has concurred with the conviction passed by the learned Magistrate in all respects, I think the appellate authority, ought to have imposed a default sentence or should not have interfered with the sentence at all. It seems that no sentence has been imposed at all. It is very easy to impose a sentence of imprisonment till the rising of the court, as in such case the court need not explain the reasons for imposing such a sentence. The learned Additional Sessions Judge has made a casual approach in dealing with the matter. Unnecessarily the sentence

of imprisonment has been taken away without assigning any reason at all. No doubt, the impugned judgment has resulted in substantial miscarriage of justice as far as the petitioner is concerned. When the court below had taken away the substantive sentence of imprisonment and imposed a fresh sentence of imprisonment till the rising of the court, the appellate authority ought to have imposed the default sentence in lieu of compensation. Therefore, the sentence imposed by the court below requires modification.

6. The learned counsel for the first respondent has pointed out that the first respondent had appeared before the court below and suffered the sentence till the rising of the court and has gone away. As the first respondent has undergone the sentence of imprisonment till the rising of the court, any further substantive sentence cannot be imposed on the first respondent again. At the same time, the court below shall impose a default sentence in lieu of compensation ordered.

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In the result, this Crl.R.P. is disposed of by setting aside the impugned judgment and the matter is remitted to the appellate authority for passing fresh orders regarding the sentence with modification as observed above. The parties shall appear before the lower appellate authority on 14.07.2015.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge