

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

Cr1.Rev.Pet.No. 645 of 2015

AGAINST THE ORDER IN CMP 7263/2014 of JUDICIAL FIRST CLASS
MAGISTRATE COURT, MATTANNUR DATED 14-01-2015

REVISION PETITIONER(S)/COMPLAINANT :

PARAYIL VIJAYAN, S/o.KELU,
PARAYIL HOUSE, CHIRAKKAL AMSOM,
KANNUR - 670 011.

BY ADV. SRI.K.RAJESH SUKUMARAN

RESPONDENT(S)/ACCUSED/STATE :

1. SAJINA P., D/o.ALIYAR, AGED 36 YEARS,
SASKASA, MOORIYAD, KUTHUPARAMBA.P.O.
KANNUR - 670 643.
2. STATE OF KERALA, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 05-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

Crl.Rev.Pet.No. 645 of 2015

APPENDIX

PETITIONER'S ANNEXURES :

A1 : COPY OF THE ORDER DATED 14.1.2015 IN
C.M.P.NO.7263/2014 ON THE FILE OF THE JUDICIAL FIRST CLASS
MAGISTRATE COURT, MATTANNUR.

RESPONDENTS' ANNEXURES : NIL

//TRUE COPY//

P.A TO JUDGE

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K.HARILAL, J.

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Crl.R.P.No. 645 of 2015

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Dated this the 5th day of June, 2015

ORDER

The revision petitioner is the complainant in C.M.P. No.7263 of 2014 on the files of the Judicial First Class Magistrate Court, Mattannur, which was filed against the 1st respondent herein for prosecuting her for the offence punishable under Section 138 of the Negotiable Instruments Act. The complaint was filed on 21/11/2014 and the petitioner was directed to file a chief affidavit and the case was posted to 12/12/2014. On that day, there was no representation from the part of the complainant and defect was not cured. On that premises, the court below rejected the complaint as defective. This order is under challenge in this revision petition.

2. The learned counsel for the petitioner submits that the case was posted to 12/12/2014; but he had erroneously

noted the said date as 12/02/2015. So, he could not cure the defect as directed by the court below within the time. There is no wilful negligence or default in not curing the defect within the time. It is also submitted that the allegation against the accused is that the cheque issued for an amount of Rs. 22,00,000/- was dishonoured for want of sufficient funds. So, if the revision petitioner is deprived of an opportunity to proceed with the complaint, the petitioner will be put to heavy financial loss and hardship.

3. Heard the learned counsel for the petitioner.

4. Going by the impugned order, it is seen that the petitioner was directed to file necessary chief affidavit before 12/12/2014. But, he has not filed the chief affidavit within the said period and thereby, the complaint was defective. Since the defect was not cured within the time, I cannot find fault with the court below in rejecting the complaint for defect.

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 a prosecution under Section 138 of the N.I. Act, restitution of loss in terms of compensation is more significant rather than punitive aspect. So, if the revision petitioner is not allowed to proceed with the complaint against the respondents, certainly, he will be put to the financial loss and hardship. In this view of the matter, the petitioner is given a further opportunity to proceed with the

complaint on terms.

Consequently, the impugned order will stand set aside on payment of Rs. 5,000/- as cost to the trial court within a period of forty five days from today. On compliance, the court below shall restore the complaint on the files and proceed in accordance with law. Needless to say, if the petitioner fails to comply with the said direction, the impugned order under challenge will stand in force as such.

The revision petition is allowed.

**Sd/-
K.HARILAL,
JUDGE.**

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//True copy//

P.A to Judge