

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

Cr1.Rev.Pet.No. 658 of 2015

AGAINST THE ORDER IN CC 1079/2013 of J.M.F.C., KAYAMKULAM
DATED 28-03-2015.

REVISION PETITIONER(S)/COMPLAINANT:

SREE GOKULAM CHIT & FINANCE CO (P) LTD.,
HEAD OFFICE AT SREE GOKULAMA TOWER,
NO.66 (O.NO.356), ARCOT ROAD,
CHENNAI-600 024, REPRESENTED BY ITS
AUTHORISED REPRESENTATIVE: VIJAYA KUMAR,
S/O. KRISHNAN NAIR, WORKING AS LEGAL CLERK
IN THE BRANCH OFFICE, BROTHER'S BUILDING,
BANK ROAD, KAYAMKULAM, KOLLAM-690 502.

BY ADV. SRI.MAHESH V RAMAKRISHNAN

RESPONDENT(S)/COMPLAINANT & STATE:

1. DAMODARAN, S/O. KUNJUKUNJU,
MARANGATTUTHARAYIL, KUTTUKULANGARA,
KAYAMKULAM, KOLLAM-690 502.
2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 03-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.658 of 2015

Dated this the 3rd day of June, 2015

ORDER

The petitioner is the complainant in C.C.No.1079 of 2013 on the files of the Judicial First Class Magistrate's Court, Kayamkulam. The above complaint was filed under Sec.138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act') against the 1st respondent. It is the case of the revision petitioner that summons issued to the accused from the court was returned as unserved, though the address shown in the complaint is the correct address of the accused and he intentionally evaded notice. However, the complainant sought time for verification of the address of the accused and the production of the correct

address, if any, before court. In the meanwhile, the learned Magistrate on 28/3/2015 dismissed the complaint on the ground that no steps had been taken. So also, batta was not paid. The learned counsel for the petitioner submits that there was no wilful negligence or laches on the part of the complainant in not prosecuting the complaint. If the complainant is not given an opportunity to proceed with the complaint, he will be put to heavy financial loss and hardship.

2. Heard the learned counsel for the petitioner.

3. Going by the impugned order, it is seen that when the case was called on 28/3/2015, the complainant was not represented and no steps had been taken. So also, he has failed to produce the correct address of the accused so far, so as to send non-bailable warrant in his correct address. On the above premises, the court below dismissed the complaint under Sec.204 of the Cr.P.C. I do not find fault with the court below in dismissing the complaint

for non-prosecution

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) 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.

5. In view of the nature and gravity of the offence under Sec.138 of the N.I. Act propounded by the Apex Court in the above decisions, I am inclined to take a different view. If the petitioner is not allowed to proceed with the complaint, he will be deprived of

his opportunity to realise the cheque amount; but he has to pay cost.

6. In this view of the matter, the impugned order under challenge is set aside on condition that the petitioner pays a cost of ₹1,000/- to the court below within a period of one month from today. On compliance of the said condition within time, the court below shall restore the complaint on its files and proceed in accordance with law. Needless to say, in case the petitioner fails to pay the cost, the impugned order will stand in force.

This revision petition is disposed of accordingly.

Sd/-
(K. HARILAL, JUDGE)

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P.S. to Judge