

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

Crl.Rev.Pet.No. 671 of 2015 ()

ST 93/2013 of J.M.F.C.-II, THODUPUZHA, DATED 31-12-2014

REVISION PETITIONER(S)/COMPLAINANT:

SREE GOKULAM CHIT AND FINANCE COMPANY (P)LTD.
ACROT ROAD, KODAMBAKKAM, CHENNAI - 600 024
REP. BY POWER OF ATTORNEY HOLDER, JOMY M.C, S/O.CHACKO
SENIOR BUSINESS MANAGER
SREE GOKULAM CHIT AND FINANCE COMPANY (P) LTD
THODUPUZHA BRANCH.

BY ADVS.SRI.K.S.BABU
SMT.N.SUDHA
SRI.BABU SHANKAR

RESPONDENT(S)/ACCUSED AND STATE:

1. RAJESH K.R., AGED 37 YEARS,
KALAVANAKUNNEL HOUSE, KULAPARACHAL P.O., RAJAKUMARY
PIN CODE: 685 619.

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

R1 BY ADVS. SRI.P.K.VARGHESE
SRI.T.M.SUDHEER
R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 10-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

STU

K.HARILAL, J.

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Crl.R.P.No. 671 of 2015

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Dated this the 10th day of June, 2015

ORDER

The petitioner is complainant in S.T.No.93/2013 on the files of the Judicial First Class Magistrate-II, Thodupuzha. The above complaint was filed against the respondent alleging offence punishable under Section 138 of the Negotiable Instruments Act. When the case was taken for hearing on 31st December, 2014, the complainant was absent and there was no representation for the complainant. So also, no steps were taken to issue warrant against the respondent despite the strict direction issued to that effect. In the above context, the court below dismissed the complaint for non-prosecution under Section 204(4) of the Code of Criminal Procedure. This order is under challenge in this revision petition.

2. Heard the learned counsel for the petitioner and the

learned counsel for the respondent.

3. Going by the impugned order, it is seen that in spite of the strict direction to take steps to issue warrant, no steps had been taken in compliance with the said direction. On that premises, I do not find fault with the court below in dismissing the complaint under Section 204(4) of the Cr.P.C. But, I am inclined to take a lenient view in a different perspective.

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 above decisions, if the petitioner is not given an opportunity to proceed with the complaint, certainly, he will be put to heavy financial loss and hardship. So, the petitioner can be given one more opportunity to proceed with the complaint on terms. The impugned order will stand set aside on deposit of ₹3,000/- in the Trial Court within a period of one month from today and the same shall be given to the respondent as cost. If the petitioner pays the cost within the specified time, the court below shall restore the complaint on the files and proceed in accordance with law.

The revision petition is disposed of accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.Ato Judge