

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

Cr1.Rev.Pet.No. 674 of 2015 ()

AGAINST THE ORDER IN ST 1429/2013 of J.M.F.C., PONNANI DATED
18-04-2015

REVISION PETITIONER/COMPLAINANT:

SIDHIQUE

S/O. BAVU, RARUVALAPPIL (H), NEAR AV HSS, PONNANI.

BY ADVS.SRI.K.B.ARUNKUMAR

SRI.RANJIT BABU

RESPONDENTS/ACCUSED/STATE & COMPLAINANT:

1. THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.

2. SREEJITH,
S/O. BALAN, CHERIYIL (H), NEAR HERO HONDA SHOWROOM,
CHERUVAYIKKARA, BIYYAM, MALAPPURAM DISTRICT-679 576.

R1 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 11-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Cr1.R.P. No.674 of 2015

Dated this the 11th day of June, 2015.

O R D E R

Going by the proceedings, it is seen that the 2nd respondent is the absconded accused before the trial court. The endorsement made by special messenger also shows the said fact. In the above view of the matter, notice to the 2nd respondent is dispensed with.

2. The petitioner is the complainant in S.T. No.1429/13 on the files of the Judicial First Class Magistrate's Court, Ponnani, which was filed against the 2nd respondent alleging offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act'). The court below took cognizance and ordered to issue summons to the 2nd respondent. The 2nd respondent entered appearance and enlarged on bail. Later, bail was cancelled for non-appearance and a non bailable warrant was issued. According to the petitioner, though he has taken steps for

remitting batta, due to mistake on the part of the Advocate Clerk, the batta was erroneously remitted in another case and unfortunately this fact has not come into the notice of the revision petitioner or his counsel. So, when the case was called on 18.4.2015, though the complainant was represented by his counsel, the learned Magistrate dismissed the complaint under Section 204 of the Code of Criminal Procedure on the reason that no batta was paid for issuing non bailable warrant to the accused in spite of specific direction. This order is under challenge in this revision petition.

3. Heard the learned counsel for both sides. Going by the impugned order, it is seen that on 18.4.2015 when the case was called, though the complainant was represented, no batta was paid for issuing non bailable warrant to the accused, in spite of repeated directions. In that context, I do not find any fault with the court below in dismissing the complaint, under Section 204 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 v. 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 propositions laid down by the Apex Court in the above decisions, I find that if the petitioner is deprived of an opportunity to proceed with the complaint, he will be put to heavy financial loss and hardship. In this view of the matter, the petitioner is given another opportunity to proceed with the complaint, on terms. The impugned order will

stand set aside on payment of Rs.2,000/- (Rupees Two thousand only) to the court below as cost within a period of one month from today. On payment of cost the court below shall restore the complaint on the files and proceed in accordance with law. In the event of failure to pay cost, the impugned order will stand in force.

This criminal revision petition is allowed.

Sd/-
K. HARILAL, JUDGE

okb.