

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

Crl.Rev.Pet.No. 720 of 2015 ()

ST 2523/2014 of J.M.F.C.-I, TIRUR DATED 18-02-2015

REVISION PETITIONER(S)/COMPLAINANT:

M/S. CHEMMANUR INTERNATIONAL JEWELLERS,
M.M.ALI ROAD, PALAYAM, PROPRIETOR
MR.C.D.BOBY, S/O. DEVASSYKUTTY, AGED 45 YEARS, VILLA NO.8
SKYLINE MEADOWS, SADANAM ROAD, CIVIL STATION P.O.
ERANHIPALAM, CALICUT - 20, REP. BY P.A.SREEKUMAR M.
S/O. SANKARAN, SREE VALSAM ERANHIPALAM P.O.
CALICUT - 673 006, KESABA POLICE STATION LIMIT
KOZHIKODE.

BY ADVS.SRI.P.J.JUSTINE

SRI.K.R.ARUN

SMT.GIA MATHAI KANDATHIL

RESPONDENT(S)/ACCUSED AND STATE:

1. BRINDA RATHNAM (HM), AGED 50 YEARS
FATHER NAME NOT KNOWN, BEM L.P SCHOOL
INDUSTRIAL ESTATE
MANJERI - 676 121 (MANJERI POLICE STATION)

2. STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM - 682 031.

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 25-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No. 720 of 2015

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Dated this the 25th day of June, 2015

ORDER

The petitioner is the complainant in S.T.No.2523/2014 on the files of the Judicial First Class Magistrate's Court-I, Tirur, filed against the 1st respondent herein, alleging offences punishable under Section 138 of the Negotiable Instruments Act. On 20.12.2014, the complaint was taken into file of the court below and numbered as S.T.No.2523/2014. Thereafter, the case was posted to 18.2.2015. On 18.2.2015, the case was dismissed by the impugned order, under Section 256 of the Code of Criminal Procedure, stating that the petitioner was absent and there was no representation for the petitioner on the last posting date also. This order is challenged in this revision petition.

2. The learned counsel for the petitioner submits that there was no wilful negligence or default in not appearing

before the court below when the case was posted for hearing. Though the petitioner has entrusted a counsel, he also could not appear in time to make a representation. The prosecution is initiated alleging dishonour of a cheque issued by the 1st respondent for want of sufficient funds. So, if the petitioner is deprived of an opportunity to prosecute the 1st respondent, the petitioner will be put to heavy financial loss and irreparable injury. The learned counsel sought for another opportunity to proceed with the complaint against the 1st respondent.

3. 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.

4. In view of the above decisions, I find that if the petitioner is deprived of an opportunity to proceed with the complaint against the petitioner, certainly, the petitioner will be put to heavy financial loss and hardship. In the above view of the matter, taking a lenient view, the petitioner can be given an opportunity to proceed with the complaint on terms, though I cannot find fault with the court below.

5. Consequently, the impugned order will stand set aside on condition that the petitioner shall pay a cost of ₹ 5,000/- to the trial court within a period of two months from today. On compliance of the said direction, the trial court shall restore the complaint on files and proceed in accordance with law. Needless to say, in the event of

failure, the impugned order challenged in this revision petition will stand in force.

The revision petition is disposed of.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge