

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

Crl.Rev.Pet.No. 739 of 2015 ()

AGAINST THE ORDER IN ST 70/2015 of C.J.M., THALASSERY
DATED 25-04-2015.

REVISION PETITIONER(S)/COMPLAINANT:

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SHIJI K. HANEEFA,
SHEEJA MANZIL, VANDIPERIYAR KARA,
PERIYAR VILLAGE, PEERUMEDU TALUK.

BY ADV. SRI.BINU PAUL

RESPONDENT(S)/ACCUSED & STATE:

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1. C.H.NISSAR, S/O. ERAMULLANKUTTY,
RAHIYANAS MANZIL, MUNDAYADUKARA,
KANNUR TALUK, KANNUR DISTRICT,
NOW RESIDING THANNADACHALA EAST KARA,
RAHIYANATH MANZIL, PIN-670 003.
 2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, PIN-682 031.

R2 BY PUBLIC PROSECUTOR JIBU P. THOMAS.

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 18-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.739 of 2015

Dated this the 18th day of June, 2015

ORDER

The revision petitioner is the complainant in S.T.C. No.70 of 2015 of the Chief Judicial Magistrate's Court, Thalassery. The above complaint was filed against the 1st respondent, alleging the offence punishable under Sec.138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act'). The case of the complainant is that in discharge of a legally enforceable debt, the 1st respondent has issued a cheque for an amount of ₹5,00,000/- to the complainant and when the same was presented for encashment, got dishonoured and returned for want of sufficient fund.

2. When the case was taken up on 25/4/2015, the complainant was absent and there was no representation for him. So also, process fee was not paid. Consequently, the court below dismissed the complaint under Sec.204(4) of the Cr.P.C.

3. The learned counsel for the petitioner submits that the non-representation of the complainant, when the case was taken up for hearing, was neither wilful; nor caused by negligence. It was caused by a mistake committed by Advocate's Clerk, who wrongly noted the number of the case in the docket sheet. If the petitioner is deprived of an opportunity to prosecute the complainant, he will be put to heavy financial loss and hardship.

4. Going by the impugned order, it is seen that on 25/4/2015, when the case was taken up for hearing, neither the complainant; nor his counsel was present before court. So also, process fee was not paid to issue notice against the accused. In that context, I do not find fault with the court below in passing the

impugned order under Sec.204(4) of the Cr.P.C.

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 view of the above decisions, I find that if the petitioner is denied of an opportunity to proceed with the complaint, certainly, he will be put to heavy financial loss. So, the revision petitioner is given another opportunity to proceed with the complaint on

terms.

7. The impugned order will stand set aside on condition that the revision petitioner pays a cost of ₹3,000/- (Rupees Three thousand only) to the trial court within a period of 45 days from today. On compliance of the said condition, the court below shall restore the complaint on its files and proceed in accordance with law. Needless to say, in event of failure, the impugned order will stand in force.

This revision petition is disposed of accordingly.

(K. HARILAL, JUDGE)

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