

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

Crl.Rev.Pet.No. 764 of 2015

CMP 408/2015 of J.M.F.C., CHALAKUDY DATED 27-05-2015

PETITIONER/COMPLAINANT:

THOMAS, AGED 58 YEARS
S/O. AUGUSTINE, KUNNANATTU HOUSE, ELANTHIKKARA
VATTEKATTUKUNNU, PUTHENVELIKKARA, THRISSUR DISTRICT.

BY ADVS.SRI.S.K.BALACHANDRAN
SRI.K.P.JOSE

RESPONDENT(S)/COMPLAINANT & ACCUSED :

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.

2. NIMMY , AGED 33 YEARS
D/O. ANTONY, MUTTIKKAL HOUSE, MALAVANA
PUTHENVELIKKARA, NOW RESIDING AT C/O HAMSA, EDATHARA
MALA, NEAR MALA POLICE STATION
THRISSUR DISTRICT-680 001.

R1 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 24-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

Crl.R.P. No. 764 of 2015

Dated this the 24th day of June, 2015

ORDER

The revision petitioner herein is the complainant in C.M.P.No. 408/15 on the files of the Judicial First Class Magistrate's Court, Chalakudy. The above complaint was filed by the petitioner against the 2nd respondent alleging the commission of the offence punishable under Sec. 138 of the Negotiable Instruments Act. After filing the complaint, the complaint was returned for curing the defect and to submit within 7 days. The complaint was re-submitted by the petitioner with a petition to condone the delay and the same was allowed on payment of cost of Rs. 1,000/- to the Taluk Legal Services Authority to be paid on or before 27/5/2015; but the cost was not paid within the specified time.

2. Consequently, the petition to condone delay was dismissed. Subsequently, the complaint was also dismissed. This revision petition is filed challenging the impugned order

by which the complaint stands dismissed.

3. The learned counsel for the petitioner submits that, in fact, there was no wilful negligence or default from the part of the petitioner in not paying the cost, within time. Though the counsel for the petitioner entrusted his clerk to pay the cost, she did not pay the cost. The non-payment of cost was not informed to the counsel also. The counsel *bona fide* believed that the clerk had paid the cost as directed by the counsel. Since the cost was not paid, the delay condonation petition was dismissed. Consequently, the complaint itself was dismissed. The learned counsel urged for a further opportunity to proceed with the complaint. It is also submitted that unless the petitioner is given a further opportunity to proceed with the complaint, he will be put to heavy financial loss and hardship.

4. Going by the impugned order, it is seen that the complaint was filed with a petition to condone the delay and the petition for condoning the delay was allowed on payment of cost to the Legal Services Authority to be paid

on or before 27/5/2015 and the petitioner has not paid the cost within time. Hence I do not find fault with the court below in dismissing the complaint on default. But, I am inclined to take a lenient view on different perspective.

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 not given an opportunity to proceed with the complaint, he will be put to heavy financial loss and

hardship. Consequently, the petitioner is given further opportunity to proceed with the complaint on terms:

7. The impugned order under challenge will stand set aside on condition that the petitioner pays a cost of Rs. 3,000/- to the concerned Taluk Legal Services Authority within a period of forty five days from today and produce the receipt thereof before the trial court. On compliance of the said condition, the Court below shall restore the complaint on the files and proceed in accordance with the law. Needless to say, in case of failure, the impugned order under challenge will stand in force.

The Revision Petition is disposed of accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge