

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

Cr1.Rev.Pet.No. 842 of 2015

AGAINST THE ORDER IN CMP 3047/2014 of C.J.M.
COURT, KOTTAYAM DATED 07-04-2015.

REVISION PETITIONER(S)/COMPLAINANT:

P.C. BIJU,
S/O. CHANDRASEKHARAN NAIR, PADATHIYANIKKAL HOUSE,
MAMMATTIKANAM P.O., IDUKKI DISTRICT-685 566.

BY ADV. SRI.GOKUL DAS V.V.H.

RESPONDENT(S)/ACCUSED & STATE:

1. AJAYAGHOSH M.R.,
MAROTTIL HOUSE, PALICKATHODE P.O.,
KOTTAYAM-686 503.

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

R1 BY ADV. SRI.LIJI.J.VADAKEDOM
R2 BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 13-07-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No. 842 of 2015

Dated this the 13th day of July, 2015

ORDER

The revision petitioner herein is the complainant and the 1st respondent herein is the accused in C.M.P.No.3047 of 2014 before the Chief Judicial Magistrate's Court, Kottayam. The above private 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'). Originally, the said complaint was filed as C.M.P.No.1461 of 2014 before the Judicial First Class Magistrate's Court, Adimaly, and the same was returned for re-filing before the above court in compliance with the direction of the Supreme Court in

the decision reported in Dashrat Rupsingh Rathod v. State of Maharashtra and another [(2014) 9 SCC 129 = 2014 (3) KLT 605]. Therefore, the petitioner presented the above complaint on 29/9/2014 as C.M.P.No.3047 of 2014 before the above court and the learned Magistrate directed the petitioner to produce the original cheque which is the subject matter of the above proceedings and the case was adjourned for production of the original cheque. But, he failed to produce the original cheque in spite of specific directions issued repeatedly. In the above context, the trial court dismissed the complaint for non-prosecution. This order is under challenge in this revision petition.

2. The learned counsel for the revision petitioner submits that there was no wilful negligence or default on the part of the petitioner in not producing the cheque within the specific time. Due to inadvertent omission, the Advocate clerk, attached to the office of

the counsel appearing for the revision petitioner before the court below, did not note down the direction for production of the cheque and he noted down only the date to which the above case was adjourned. So, even though the case was adjourned for six times, he could not produce the cheque due to the lack of knowledge of the said direction. When the above case stood posted on 7/4/2015, the petitioner could not appear before the court below due to the fact that he could not reach the court in time when the case was called for hearing. Unfortunately, the counsel appearing for the petitioner also could not present the above case. In that context, the court below dismissed the complaint on a finding that the complainant has no prima facie case.

3. Going by the impugned order, it is seen that the court below has arrived at a finding that the complainant has no prima facie case on the basis of the failure to produce the cheque in spite of the

directions repeatedly issued to the petitioner. So also, the complainant was absent and there was no representation. In such circumstances, the court below ought to have dismissed the complaint for non-prosecution under Sec.204(4) of the Cr.P.C.; but instead of it, it appears that the court below dismissed the complaint on a finding that there is no prima facie case. But, obviously, the petitioner was not interested in prosecuting the complaint promptly and diligently. In this view of the matter, dismissal of the complaint can be justified under Sec.204(4) of the Cr.P.C. It is true that if the petitioner is deprived of an opportunity to proceed with the complaint, certainly, he will be put to heavy financial loss and hardship. In this view of the matter, I find that the petitioner can be given a further opportunity to proceed with the complaint on terms.

4. Consequently, the impugned order will stand set aside on condition that the petitioner deposits

₹3,500/- (Rupees Three thousand and five hundred only), as costs to the 1st respondent, in the court below within a period of 45 days from today and the 1st respondent is allowed to withdraw the same. On compliance, the court below shall restore the complaint on the files and proceed in accordance with law. Needless to say, in the event of failure, the impugned order will stand in force.

This revision petition is accordingly allowed.

Sd/-
(K. HARILAL, JUDGE)

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P.S. to Judge