

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

Cr1.Rev.Pet.No. 846 of 2015 ()

AGAINST THE ORDER IN STC 277/2015 of J.F.C.M.COURT-I, KANNUR
DATED 01-04-2015

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REVISION PETITIONER/COMPLAINANT:

YAHYA, AGED 42 YEARS,
S/O.THARAVIKUTTY HAJI, BUSHRA MANZIL, VAYANTHOD,
MATTANNUR.

BY ADVS.SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH

RESPONDENTS/ACCUSED & STATE:

1. C.M.SHUKOOR, AGED 40 YEARS,
S/O.MOOSA, PUTHIYAPURAYIL (MURIKKANCHERY) VEEDU,
SIVAPURAM, MATTANNUR, KANNUR 670702.

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

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 07-07-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

OKB

K.HARILAL, J.

Cr1.R.P. No.846 of 2015

Dated this the 7th day of July, 2015.

O R D E R

Revision petitioner is the complainant in S.T.C. No.277/15 on the files of the Judicial First Class Magistrate's Court-I, Kannur, which was instituted under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act'). The above complaint was originally filed before the Judicial First Class Magistrate's Court, Mattannur and later it was transferred to the Judicial First Class Magistrate's Court-I, Kannur. The case was posted to 1.4.2015 for appearance of the first respondent. But he was absent on that day and the counsel for the petitioner failed to represent him. Hence, the complaint was dismissed under Section 204(4) of the Code of Criminal Procedure for non-prosecution, which is challenged by filing this revision petition.

2. Heard the learned counsel for the revision petitioner.

3. The learned counsel submits that the non representation of the complainant is only due to the default of the counsel. There was no wilful negligence or default on the part of the counsel also. If the petitioner is denied of an opportunity to proceed with the complaint, he will be put to great financial loss and hardship. The complaint was filed alleging dishonour of the cheque for an amount of Rs.75,000/—, allegedly issued by the first respondent herein. The learned counsel for the revision petitioner further prayed for an opportunity to proceed with the complaint.

4. Going by the impugned order, it is seen that neither the complainant nor the counsel was present before the court, when the case was taken up for hearing. So also, no steps had been taken to issue notice to the first respondent. In the above context, I do not find any fault with the court below in dismissing the complaint for non-prosecution under

Section 204(4) of the Cr.P.C. But I am inclined to take a lenient view in a 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 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.

6. In view of the above decisions, I find that, if the revision petitioner is deprived of an opportunity to proceed with the complaint, certainly, he will be put to heavy financial loss and hardship. Therefore, the revision petitioner can be given an opportunity to

proceed with the complaint against the first respondent, on terms.

7. Consequently, the impugned order will stand set aside on condition that the revision petitioner pays a cost of Rs.2,500/- (Rupees Two thousand and five hundred only) to the trial court within a period of 45 days from today. On compliance of the said condition, the trial court 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 criminal revision petition is allowed.

Sd/-
K. HARILAL, JUDGE

okb.