

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

Crl.Rev.Pet.No. 901 of 2015 ()

AGAINST THE ORDER IN CC 164/2014 of C.J.M. COURT, KASARAGOD DATED
02-09-2014

REVISION PETITIONER(S)/APPELLANT/COMPLAINANT:

C.I. ABDULLA KUNHI, AGED 54 YEARS,
MANAGING DIRECTOR, MALABAR COLLECTION(P) LTD.,
NEAR NEW BUS STAND, KASARAGOD.

BY ADVS.SRI.T.G.RAJENDRAN
SMT.ANN SUSAN GEORGE

RESPONDENTS/ACCUSED & STATE:

1. YASODA K, AGED 52 YEARS,
D/O.KOTTAN & URVASHI, BEACH ROAD, NELLIKUNNU KADAPURAM,
KASARAGOD-673121.

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

R2 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 28-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.901 of 2015

Dated this the 28th day of July, 2015

ORDER

The petitioner is the complainant in C.C.No.164 of 2014 on the files of the Chief Judicial Magistrate's Court, Kasaragod, alleging the offence punishable under Sec.138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act') filed against the 1st respondent. This revision petition is filed challenging the impugned order dismissing the said complaint under Sec.204(4) of the Cr.P.C.

2. Heard the learned counsel for the petitioner.

3. Going by the impugned order, it is seen that the petitioner has not paid the process fee to issue summons to the accused on second occasion also. So,

I do not find any fault with the court below in dismissing the complaint under Sec.204(4) of the Cr.P.C.; but I am inclined to take a lenient view in a different perspective.

4. 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.

5. In the light of the above decisions, I find that if the petitioner is precluded from proceeding against

the accused, he will be put to heavy financial loss and hardship. In that view of the matter, the petitioner can be given an opportunity to proceed with the complaint on terms.

6. The impugned order will stand set aside on condition that the petitioner pays a cost of ₹3,000/- (Rupees Three thousand only) to the trial court within a period of two months from today. On compliance of the said condition, the learned Magistrate shall restore the complaint on the files and proceed in accordance with law.

This revision petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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//true copy//

P.S. to Judge