

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

Crl.Rev.Pet.No. 905 of 2015 ()

S.T 5560/2014 of MUNSIF MAGISTRATE COURT, S.PARAVOOR, KOLLAM
DATED 16-05-2015

REVISION PETITIONER/COMPLAINANT:-:

SANGEETH KUMAR,
S/O.THANKAMANIAMMA, K.S.NIVAS, HARIHARAPURAM P.O.
ELAKAMON, VARKALA, THIRUVANANTHAPURAM
REPRESENTED BY POWER OF ATTORNEY HOLDER SRI.A.SANIL
S/O.VIJAYAN, MADANKUNNUVILA VEEDU
VALLIKKADAVU, AYIROOR P.O., VARKALA
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.B.MOHAN LAL

RESPONDENT(S)/RESPONDENTS/STATE:-:

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

2. SRI.CHANDRAN UNNITHAN
VILAYIL VEEDU, KONGAL, PARAVUR P.O.
KOLLAM, PIN - 691 301.

R1 BY PUBLIC PROSECUTOR SRI.JIBU.P.THOMAS.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 04-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No. 905 of 2015

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Dated this the 4th day of August, 2015

ORDER

The petitioner is the complainant in S.T.No.5560/2014 on the files of the Munsiff Magistrate's Court, S.Paravur, Kollam. The order passed under Section 204(4) of the Code of Criminal Procedure dismissing the complaint is under challenge in this revision petition.

2. Heard the learned counsel for the petitioner. The learned counsel for the petitioner submits that the complainant had taken steps to issue process to the accused on 16.4.2015 itself; but the process was kept intact in the section itself without bringing to the notice of the court and in that circumstances the impugned order happened to be passed dismissing the complaint. So, no kind of laches or negligence can be attributed to the complainant alleging that he has not taken steps to issue summons to the

accused.

3. Going by the impugned order, it is seen that on 19.12.2014, the complaint was taken on the files of the court. On 23.1.2015, the court ordered to issue summons to the accused and adjourned the complaint to 13.4.2015. On that day, the complainant was absent and no steps were seen taken to issue summons to the accused. So the court again directed to take steps within two days and the complaint was adjourned to 16.5.2015. On that day, it was found that the complainant has not taken steps in compliance with the order dated 13.4.2015.

4. Though, I cannot find fault with the court below for dismissing the complaint for not taking steps, 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 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 the light of the above decisions, I find that, if the petitioner is deprived of his statutory right to prosecute the accused under Section 138 of the N.I.Act, he will be put to heavy financial loss and hardship. In that view of the matter, the impugned order will stand set aside and the court below is directed to restore the complaint on the files and proceed in accordance with law.

The revision petition is disposed of.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge