

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

Crl.Rev.Pet.No. 977 of 2015 ()

AGAINST THE JUDGMENT IN CC 2352/2010 of JUDICIAL FIRST
CLASS MAGISTRATE-V, ERNAKULAM DATED 26-12-2013

REVISION PETITIONER(S)/COMPLAINANT:

AYODHYA PRINTERS LTD,
REPRESENTED BY M.R.KRISHNAKUMAR,
GENERAL MANAGER AND AUTHORISED AGENT,
PERANDOOR ROAD,
ELAMAKKARA PO, ERNAKULAM, PIN 682026.

BY ADVS.SRI.O.SAJEEVAN
DR.PAULY MATHEW MURICKEN

RESPONDENT(S)/STATE & ACCUSED:

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

2. T.S. RAJAN,
CHIEF EDITOR, GENERAL INFORMATION WEEKLY,
INFORMATION BUREAU, CC.43/387,
POWER HOUSE EXTENSION ROAD, ERNAKULAM, PIN 682018.

R1 BY PUBLIC PROSECUTORSRI. JUSTINE JACOB
R2 BY ADV. SRI.K.A.SALIL NARAYANAN

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 07-08-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.977 of 2015

Dated this the 7th day of August, 2015

ORDER

The petitioner is the complainant in C.C.No.2352 of 2010 on the files of the Judicial First Class Magistrate's Court-V, Ernakulam. The above C.C. was filed by the petitioner herein alleging the offence punishable under Sec.138 of the Negotiable Instruments Act, 1881 against the 2nd respondent herein. The above complaint was dismissed by the impugned order under Sec.204(4) of the Code of Criminal Procedure. This order is under challenge in this revision petition.

2. Going by the impugned order, it is seen that on 26/12/2013, when the complaint was taken up for

hearing, neither the complainant; nor the counsel was present before court and no steps were taken for issuing Non Bailable Warrant to the accused, despite of granting sufficient time from 30/11/2013. In that context, the court below dismissed the complaint under Sec.204(4) of the Cr.P.C. for non-prosecution.

3. I do not find any fault with the court below in dismissing the complaint for the reasons stated in the impugned order. But, I am taking 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 deprived of an opportunity to proceed with the complaint, he will be put to heavy financial loss and hardship. Hence the complaint can be allowed on terms.

6. The impugned order will stand set aside on condition that the petitioner deposits an amount of ₹3,000/- (Rupees Three thousand only) in the trial court within a period of 45 days from today and the same shall be given as costs to the 2nd respondent. 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 revision petition is allowed.

Sd/-

(K. HARILAL, JUDGE)

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//true copy// P.S. to Judge