

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

Crl.Rev.Pet.No. 1052 of 2015 ()

AGAINST THE JUDGMENT IN ST 320/2013 of J.M.F.C.- III, ALUVA
DATED 31-07-2013

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REVISION PETITIONER/COMPLAINANT:

K.O.GEORGE, AGED 56 YEARS,
S/O.OUSEPH, KARUMATHY HOUSE, NAYATHODU,
ANGAMALY.

BY ADV. SRI.K.S.RAJEEV (ALUVA)

RESPONDENTS/ACCUSED/STATE:

1. MUKESH.T.K.
S/O.KUTTAPPAN, MANAKETHEMALI HOUSE, NAYATHODU P.O
ANGAMALY-683572 (PROPRIETOR, ADHITHYA FOOT WEARS,
CANAL ROAD,KALADY P.O)

2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA-682 031.

R2 BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 21-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Cr1.R.P. No.1052 of 2015

Dated this the 21st day of August, 2015.

O R D E R

The revision petitioner is the complainant and the 1st respondent is the accused in S.T.No.320/13 on the files of the Judicial First Class Magistrate's Court-III, Aluva. The above complaint was filed by the petitioner herein against the 1st respondent alleging commission of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act'). But now the aforesaid complaint stands dismissed under Section 204(4) of the Cr.P.C. This order is under challenge in this revision petition.

2. Heard the learned counsel for the revision petitioner.

3. Going by the impugned order, it is seen that on 31.7.2013 when the case was taken up for hearing, neither the complainant nor his counsel was present before the court. So also, no steps has been taken to

issue notice to the 1st respondent. In that context, the court below dismissed the complaint under Section 204 (4) of the Cr.P.C. for non-prosecution. I do not find any fault with the court below in dismissing the complaint in the above circumstance. But I am inclined to take a lenient view in a different perspective. Adjudication of a lis on merits is always desirable than the disposal of the case on technicalities. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred rather than technicalities.

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 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.

5. In view of the above decisions, if the complainant is deprived of an opportunity to proceed against the accused, certainly he will be put to heavy financial loss and hardship. So, the complainant can be given an opportunity to proceed against the accused under law, on terms.

6. In the result, the impugned order under challenge will stand set aside on condition that the revision petitioner pays Rs.2,000/- as cost to the trial court on or before 1st November, 2015. On compliance with the said condition, the trial court shall restore the complaint on the files and proceed in accordance with law. Needless to say, in case of failure, the impugned order will stand in force.

This criminal revision petition is disposed of as above.

Sd/-
K. HARILAL, JUDGE

okb.