

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

Cr1.Rev.Pet.No. 2200 of 2014 ()

CC 170/2014 of J.M.F.C. - II, PERUMBAVOOR

REVISION PETITIONER(S)/COMPLAINANT:

JOHN JERSON, AGED 27 YEARS
S/O.AUGUSTINE P.J., 17/1851 B, PUTHANPARAMBIL HOUSE
MUNDAMVELI P.O., ARYAD, SOUTH MOOLANKUZHI
KOCHI-682 007.

BY ADV. SRI.R.SANJITH

RESPONDENT(S)/ACCUSED:

1. P.P.JOHNSON
AGE AND FATHER'S NAME ARE NOT KNOWN TO THE PETITIONER
VARAPPUZHA LANDING P.O., VARAPPUZHA, ERNAKULAM-682263.

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

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 09-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

Crl.Rev.Pet.No. 2200 of 2014

APPENDIX

PETITIONER'S ANNEXURE:

A1 : COPY OF THE ORDER OF LEARNED JUDICIAL FIRST CLASS
MAGISTRATE COURT - II, PERUMBAVOOR DATED 18.9.2014.

RESPONDENTS' ANNEXURES : NIL

//True copy//

P.A to Judge

STU

K.HARILAL, J.

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Crl.R.P.No.2200 of 2014

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Dated this the 9th day of July, 2015

ORDER

The revision petitioner is the complainant in C.C. No.170/2014 on the files of the Judicial First Class Magistrate's Court-II, Perumbavoor. The above complaint was filed under Section 190(1)(a) of the Code of Criminal Procedure alleging offence punishable under Section 138 read with Section 142 of the N.I.Act, against the 1st respondent herein. The complaint was admitted on the files and issued notice to the respondent. But the petitioner has not taken steps within the time and the court below has dismissed the complaint under Section 204(4) of the Code of Criminal Procedure. This order is challenged in this revision petition.

2. The learned counsel for the petitioner submits that there is no willful negligence or laches from the part of the

petitioner in not taking steps within the time. Due to inadvertent omission, the petitioner could not take steps within the time. The complaint was filed alleging the dishonour of the cheque issued for an amount of ₹3,50,000/-. So, if the petitioner is not given another opportunity to proceed with the complaint, the petitioner will be put in heavy financial loss and hardship.

3. 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.

4. In view of the above decisions, I find that, as rightly submitted by the learned counsel for the petitioner, if the petitioner is deprived of the right to proceed against the accused with the complaint, he will be put to heavy financial loos and hardship.

5. In the above view of the matter, the petitioner can be given another opportunity to proceed with the complaint on terms. The impugned order under challenge will stand set aside on condition that the petitioner shall pay a cost of ₹3,000/- 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 revision petition is disposed of.

Sd/-
K.HARILAL, JUDGE.

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//True copy//

P.A to Judge