

K.K.Jayan Vs. Vinod S.M.

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Court : Kerala

Decided On : Feb-05-2013

Judge : Honourable Mr.Justice K.Harilal

Appellant : K.K.Jayan

Respondent : Vinod S.M.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL TUESDAY, THE 5TH DAY OF FEBRUARY 2013 16TH MAGHA 193 CrI.Rev.Pet.No. 12 of 2013 ----- AGAINST THE JUDGMENT IN CRA.106/2012 of II ADDITIONAL SESSIONS COURT,THODUPUZHA REVISION PETITIONER/APPELLANT/ACCUSED: K.K.JAYAN, AGED 4 YEARS S/O KUTAPPAN, KOTTAMALAYIL HOUSE, MANARY P.O. PAYIPRA VILLAGE, MUVATTUPUZHA TALUK. BY ADV. SRI.K.G.SARATHKUMAR COMPLAINANTS/RESPONDNET/COMPLAINANT:

1. VINOD S.M.,AGED 3 S/O MONCY, SOORYANKUNNEL VEEDU, KANJIRAMATTAM KAR THODUPUZH VILLAGE, THODUPUZHA TALUK IDUKKI DISTRICT.686 786.

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

SEENA RAMAKRISHNAN THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 05-02-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: K. HARILAL J.

===== CRL.R.P.NO. 12 OF 201.=====

Dated this the 5th day of February 2013 ORDER The Revision Petitioner herein is the accused in S.T.No. 40/2011 on the files of the Judicial Magistrate of First Class-II, Thodupuzha as well as the appellant in Crl.A.No.106/2012 of the Court of II Additional Sessions Judge, Thodupuzha. The petitioner was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act. After trial, the learned Magistrate convicted the Revision Petitioner and sentenced him to undergo imprisonment till the rising of the court and to pay compensation of Rs.90,000/-- to the complainant under Section 357(3) of the Code of Criminal Procedure. In default, simple imprisonment for a period of three months. Aggrieved by the conviction and sentence imposed on the Revision Petitioner, he filed criminal appeal challenging the conviction and sentence imposed on him by the learned Magistrate. The learned II Additional Sessions Judge dismissed the appeal confirming the conviction and sentence imposed by the learned Magistrate. CRL.R.P.NO. 12/2013 -2- 2. The case of the Revision Petitioner-accused is that the Revision Petitioner borrowed an amount of Rs.90,000/- from the first respondent/complainant on 18/7/2010 and in discharge of that debt, he issued a cheque drawn in favour of the Punjab National Bank, Muvattupuzha for an amount of Rs.90,000/-. When the cheque presented for encashment, the same was dishonoured with remarks "insufficiency of funds". Though the first respondent issued lawyer's notice and the Revision Petitioner received the same, he has not repaid the amount as demanded by the notice. So, the complaint was filed to prosecute the Revision Petitioner under Section 138 of the Negotiable Instruments Act.

3. During the trial, PW1 was examined and Exts.P1 to P6 were marked on the side of the first respondent-complainant and DWs.1 and 2 were examined and Exts. D1 and D2 were marked on the side of the accused.

4. In appeal, the learned Sessions Judge also re- appreciating the entire evidence and found that the conviction and sentence imposed by the learned Magistrate on the petitioner is correct. But in this revision petition, the Revision Petitioner raised again all the contentions which were CRL.R.P.NO. 12/2013 -3- appreciated by the courts below and concurrently found against the accused. The Revision Petitioner failed to point out any illegality or impropriety which deserves to be considered under revisional jurisdiction. None of the grounds are sufficient to warrant interference under Sections 397 and 401 of the Cr.P.C. In such circumstances, the Crl.Revision Petition deserves to be dismissed at the admission stage itself.

6. The learned counsel for the Revision Petitioner submits that the Revision Petitioner wants six months a reasonable time to pay the compensation to be paid to the first respondent/complainant. Counsel further submits that he is a manual worker who is the only breadwinner of his family. Having regard to the above submission and the facts and circumstances of the case, six months' time can be granted to pay the compensation ordered by the court below.

7. In the result, this Criminal Revision petition is dismissed subject to the following terms: i) The Revision Petitioner shall pay a compensation of Rs.90,000/-(Rupees ninety thousand only) to the first respondent/complainant within a period of six months from today. CRL.R.P.NO. 12/2013 -4- ii) He shall suffer the imprisonment till the rising of the court ordered by the court below. iii) The Revision Petitioner shall surrender before the trial court to suffer the imprisonment after the payment of compensation as ordered above on or before 7/8/2013, with sufficient proof thereof . iv) In default, the Revision Petitioner shall undergo default sentence as ordered by the Sessions Court. The Crl.Revision Petition is dismissed accordingly. Sd/- K. HARILAL , JUDGE ks. True copy P.s.to Judge CRL.R.P.NO. 12/2013 -5-