

P.M.Gopalakrishnan Vs. Nihar Markose

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Court : Kerala

Decided On : Aug-02-2013

Judge : Honourable Mr.Justice K.Harilal

Appellant : P.M.Gopalakrishnan

Respondent : Nihar Markose

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL FRIDAY, THE 2ND DAY OF AUGUST 2013 11TH SRAVANA, 1935 CrI.Rev.Pet.No. 644 of 2005 (A) ----- CRL.A.NO. 173/2004 OF ADDL.SESIONS COURT (ADHOC)-II, ERNAKULAM CC.NO. 177/2000 OF CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM ----- REVISION PETITIONER/APPELLANT/ACCUSED :

----- P.M.GOPALAKRISHNAN, PROPRIETOR, M/S.SUGAMA PUBLISHERS, SANTHINAGAR,THEVARA, KOCHI. BY ADVS.SRI.D.PEETHAMBARAN SRI.M.R.SABU SRI.VINOD VALLIKAPPAN RESPONDENTS/COMPLAINANT & STATE :

----- 1. NIHAR MARKOSE, PROPRIETOR, PRASAD INDUSTRIES, 4/209/A, NEAR FORTH GATE, CALICUT AND HAVING ITS BRANCH OFFICE AT 50/1166A, NEAR ALL AMEEN SCHOOL, R.S.ROAD, EDAPPILLY, KOCHI.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. R1 BY ADV. SRI.SREELAL N.WARRIER SMT. RENJANA KURIAKOSE SRI.ARUN PRAKASH R2 BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 02-08-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: sts K. HARILAL, J.

----- CrI.R.P. No. 644 of 2005
----- Dated this the 2nd day of August, 2013
ORDER This Revision Petition is filed challenging the concurrent findings of conviction entered and the sentence imposed on the Revision Petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act') in Criminal Appeal No.173/2004 on the files of the Additional Sessions Judge, (Adhoc-II), Ernakulam. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.177/2000 on the files of the Chief Judicial Magistrate's Court, Ernakulam. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for three months and to pay a compensation of 30,000/- to the complainant under Sec.357(3) of the Code of Criminal Procedure. In default, to CrI.R.P. No. 644 o

2. undergo simple imprisonment for one month.

2. The learned counsel for the Revision Petitioner reiterated the contentions which were raised before the courts below and got rejected concurrently. The learned counsel urged for a re-appreciation of evidence once again, which is not permissible under the revisional jurisdiction unless any kind of perversity is found in the appreciation of evidence. The Revision Petitioner failed to point out any kind of perversity in the appreciation of evidence. The courts below had concurrently found that the complainant/1st respondent had successfully discharged initial burden of proving execution and issuance of the cheque; whereas the Revision Petitioner had failed to rebut the presumption under Section 118(a) and 139 of the N.I. Act which stood in favour of the 1st respondent. So also, it is found that the debt due to the 1st respondent was a legally enforceable debt and Exts.P1 and P2

cheques were duly executed and issued in discharge of the said debt. I CrI.R.P. No. 644 o

3. do not find any kind of illegality or impropriety in the said findings or perversity in appreciation of evidence, from which the above findings had been arrived. Therefore, I am not inclined to re-appreciate entire evidence once again and I confirm the concurrent findings of conviction.

3. The counsel for the Revision Petitioner submits that challenge under this Revision is confined to sentence only. The learned counsel for the Revision Petitioner submits that the sentence imposed on the Revision Petitioner is disproportionate with the gravity and nature of the offence. He further submits that the Revision Petitioner is willing to pay the compensation as ordered by the court below; but he is unable to raise the said amount forthwith due to paucity of funds. But he is ready to pay the compensation within three months.

4. Similarly, the substantive sentence imposed on the revision petitioner is too harsh and excessive. The learned counsel for the revision petitioner prayed for setting aside CrI.R.P. No. 644 o

4. the sentence of imprisonment also. If the revision petitioner is incarcerated for a period as ordered by the courts below, the entire family will put in great hardship.

5. The Supreme Court, in the decision in Kaushalya Devi Massand v. Roopkishore (AIR 201.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. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, expressing willingness

to pay CrI.R.P. No. 644 o

5. the compensation within three months, I am inclined to grant three months time to pay the compensation. Similarly, the substantive sentence of imprisonment is reduced and modified to simple imprisonment for one day till rising of the court. Consequently, this Revision Petition is liable to be disposed of subject to the following terms. i. The Revision Petitioner shall undergo simple imprisonment for one day till rising of the court. ii. The Revision Petitioner shall pay a compensation of Rs. 30,000/- (Rupees Thirty thousand only) to the 1st respondent/complainant within a period of three months from today. If the revision petitioner had deposited any amount in compliance with the interim order of this Court, the same shall be given credit and the balance alone need be paid as compensation. The 1st respondent/complainant is allowed to realise the amount, if any, deposited. iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment CrI.R.P. No. 644 o

6. as ordered above on or before 4th November, 2013 with sufficient proof to show payment of compensation . iv. In default, the Revision Petitioner shall undergo simple imprisonment for a period of three months. The Criminal Revision Petition is disposed of accordingly. (K. HARILAL, JUDGE) stu //True copy// P.A to Judge.

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