

A.M.Ramesh Vs. C.Hamsa

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Court : Kerala

Decided On : Oct-07-2013

Judge : Honourable Mr.Justice K.Harilal

Appellant : A.M.Ramesh

Respondent : C.Hamsa

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL MONDAY, THE 7TH DAY OF OCTOBER 2013 15TH ASWINA, 1935 CrI.Rev.Pet.No. 2007 of 2013 ----- CrI.A2702011 of ADDITIONAL DISTRICT AND SESSIONS COURT (ADHOC)-I, MANJERI DATED 07/11-2012 STC992009 of JUDICIAL FIRST CLASS MAGISTRATE-I, PERINTHALMANNA DATED 19/07-2011 REVISION PETITIONER(S)/ APPELLANT/ ACCUSED: ----- A.M.RAMESH, AGED 51 YEARS S/O GOPALAN, ATHIRA HOUSE, NEAR HIGH SCHOOL VALANCHERY P.O, MALAPPURAM DISTRICT BY ADVS.SRI.K.P.SUDHEER SRI.ARUN MATHEW VADAKKAN RESPONDENTS/ COMPLAINANT & STATE: ----- 1. C.HAMSA, MANAGING PARTNER, VENGAD TIMBER TRADERS (REPRESENTED BY THE POWER OF ATTORNEY HOLDER C.V MUHAMMEDKUTTY, PARTNER, VENGAD TIMBER TRADERS, VENGAD P.O - 679 338, PERINTHALMANNA, MALAPPURAM DISTRICT) 2. STATE OF KERALA , REPRESENTED BY THE PUBLIC PROSECUTOR HIGH

COURT OF KERALA, ENRAKULAM, KOCHI682031 R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN. THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON0710-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: stu K.HARILAL, J.

= = = = = Crl.R.P.No.2007 of 2013 = = = = = Dated this the 7th day of October, 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.270/2011 on the files of the Additional District and Sessions Judge, (Adhoc) - I, Manjeri. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T.C.No.99/2009 on the files of the Judicial First Class Magistrate's Court-I, Perinthalmanna. According to the impugned judgment, the Revision Petitioner is sentenced to pay a fine of 50,000/- and in default of payment of fine, to undergo simple imprisonment for a period of two months. The fine amount, if realised is ordered to be paid to the Crl.R.P.No.2007 of 2013 2 complainant as compensation under Sec.357(1) of the Code of Criminal Procedure.

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 Ext.P2 cheque was duly Crl.R.P.No.2007 of 2013 3 executed and issued in discharge of the said

debt. I 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 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 fine 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 fine within three months.

4. The Supreme Court, in the decision in Kaushalya Devi Massand v. Roopkishore (AIR 2011 SC2566, 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 CrI.R.P.No.2007 of 2013 4 sufficient to meet the ends of justice. Further, in Vijayan vs. Baby (2011(4) KLT355, 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. 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 the fine within three months, I am inclined to grant three months time to pay the fine. Consequently, this Revision Petition is liable to be disposed of subject to the following terms. i. The Revision Petitioner shall pay a fine of Rs.50,000/- (Rupees Fifty thousand only) within a period of three months from today, which shall be paid to the 1st respondent/complainant as compensation under Sec.357(1) CrI.R.P.No.2007 of 2013 5 of the Cr.P.C. ii. In default, the Revision Petitioner shall undergo simple imprisonment for a period of two months. The Criminal Revision Petition is disposed of accordingly. K.HARILAL, JUDGE. Stu //True copy// P.A to Judge.