

A.Nizar Vs. State of Kerala

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Court : Kerala

Decided On : Sep-30-2013

Judge : Honourable Mr.Justice K.Harilal

Appellant : A.Nizar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL MONDAY, THE 30TH DAY OF SEPTEMBER 2013 8TH ASWINA, 1935 CrI.Rev.Pet.No. 1895 of 2013 ----- CRA3092012 OF THE COURT OF ADDITIONAL SESSIONS JUDGE(ADHOC-I), ERNAKULAM . CC7412010 of J.M.F.C.-I, KOCHI REVISION PETITIONER(S)/APPELLANT/ACCUSED:

----- A.NIZAR, AGED 43 YEARS S/O.ABOOBACKER, PUTHUVAL, THOTTAPPILLY.P.O. ALAPPUZHA, ALAPPUZHA DISTRICT. BY ADVS.SRI.T.MADHU SRI.D.M.SAJEEVAN

RESPONDENTS/RESPONDENTS/STATE AND COMPLAINANT:

----- 1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM. 682 031.

2. E.S.ASHRAF, AGED 49 YEARS S/O.SYEDALI, HOUSE NO.2/257, PULLUPALAM ROAD FORT KOCHI, ERNAKULAM DISTRICT. 682 037. R1 BY

PUBLIC PROSECUTOR SRI. LIJU STEPHEN R2 BY ADV. SRI. K.M.FIROZ THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30-09-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: nkm K. HARILAL, J.

----- Crl.R.P. No.1895 of 2013 ----- Dated this the 30th day of September, 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.309 of 2012 on the files of the Additional Sessions Court, (Adhoc -I), Enakulam. The above appeal was filed challenging the judgment finding the Revision Petitioner guilty of the said offence, passed in C.C.No.741 of 2010 on the files of the Judicial First Class Magistrate's Court-I, Kochi. According to the impugned judgment, the Revision Petitioner is sentenced to pay a fine of Rs.70,000/- (Rupees Seventy Thousand only). On realisation, the entire fine amount shall be paid to the complainant/2nd respondent as compensation Crl.R.P. No.1895 of 2013 2 under Section 357(1)(b)Cr.P.C. In default of payment of fine, the Revision Petitioner shall suffer simple imprisonment for two months.

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/2nd 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 2nd respondent. So also, it is found that the debt due to the 2nd respondent was a legally enforceable debt and Ext.P6 Crl.R.P.

No.1895 of 2013 3 cheque was duly 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 challenge under this Revision is confined to sentence only. 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 six 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 CrI.R.P. No.1895 of 2013 4 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) 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. The learned counsel for the Revision Petitioner prayed for converting the fine amount to compensation payable directly to the complainant/2nd respondent. The counsel for the 2nd respondent submits that he has no objection in converting the fine amount to compensation payable directly to him. In view of the above submission at the Bar, the Revision Petitioner is allowed to pay the amount directed to paid as fine as compensation to the complainant directly. In view of the conversion of fine to CrI.R.P. No.1895 of 2013 5 compensation, the substantive sentence will also stand modified, in supersession of the sentence ordered by the appellate court. The Revision Petitioner shall undergo simple imprisonment for one day till rising of the court. 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 compensation within six months, I am inclined to grant six months time to pay the compensation. 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 Rs.70,000/- (Rupees Seventy Thousand only) to the complainant/2nd respondent as compensation within a period of six months from today. iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple CrI.R.P. No.1895 of 2013 6 imprisonment as ordered above on or before 01/04/2014 with sufficient proof to show payment of compensation . iv. In default, the Revision Petitioner shall undergo simple imprisonment for a period of two months. The Criminal Revision Petition is disposed of accordingly. Sd/-K.HARILAL JUDGE MJL

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