

Pradeep Vs. Sujith Kumar and Another

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Court : Kerala

Decided On : Oct-07-2013

Judge : Honourable Mr.Justice K.Harilal

Appellant : Pradeep

Respondent : Sujith Kumar and Another

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE
HONOURABLE MR.JUSTICE K.HARILAL MONDAY,THE7H DAY OF
OCTOBER201315TH ASWINA, 1935 CrI.Rev.Pet.No. 1905 of 2013 ()
----- AGAINST THE

JUDGMENT

IN CRL.A. NO.46/2006 of ADDL.SESIONS COURT-II, MAVELIKKARA
AGAINST THE

JUDGMENT

IN CC1552004 of JUDICIAL FIRST CLASS MAGISTRATE COURT,
CHENGANNUR ----- PETITIONER/APPELLANT/ACCUSED:
----- PRADEE,P,AMBILI VILASAM, EVOOR
NORTH MURI, CHEPPAD.PO. BY ADV. SRI.R.KRISHNA RAJ
RESPONDENT(S)/RESPONDENT/COMPLAINANT:

----- 1. SUJITH KUMAR.K,

SREERANGAM HOUSE, KURATTIKAD MURI, MANNAR VILLAGE.

2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. R1 BY ADV. SRI.B.RENJITHKUMAR R2 BY ADV. PUBLIC PROSECUTOR SRI.LIJU V.STEPHEN THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 07/10/2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: PJ K. HARILAL, J.

----- Crl.R.P. No. 1905 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.46 of 2006 on the files of the Additional Sessions Judge - II, Mavelikara. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.155 of 2004 on the files of the Judicial First Class Magistrate's Court-I, Chengannur. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for a period of three months and to pay a compensation of Rs.80,000/- (Rupees Eighty Thousand only) to the complainant /1st respondent under Section 357 (3) of Cr.P.C. In default of payment, the Crl.R.P. No. 1905 of 2013 2 Revision Petitioner shall undergo simple imprisonment for a further period of 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/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.P1 cheque was duly executed and issued in discharge of the CrI.R.P. No. 1905 of 2013 3 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 five 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 the sentence of imprisonment also. If the CrI.R.P. No. 1905 of 2013 4 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 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 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.

6. The learned counsel for the respondent submits that the cheque is of the year 2007 and a reasonable period alone can be given to pay the compensation. CrI.R.P. No. 1905 of 2013 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 compensation within five months, I am inclined to grant five months time to pay the compensation. Similarly, the substantive sentence of simple imprisonment for a period of three months will stand 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.80,000/- (Rupees Eighty Thousand only) to the complainant/1st respondent within a period of five months from today. iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 08/03/2014 Crl.R.P. No. 1905 of 2013 6 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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