

Ajeesh Vs. Makhbool

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Court : Kerala

Decided On : Oct-30-2013

Judge : Honourable Mr.Justice V.Chitambaresh

Appellant : Ajeesh

Respondent : Makhbool

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL WEDNESDAY, THE30H DAY OF OCTOBER20138TH KARTHIKA, 1935 Crl.Rev.Pet.No. 2135 of 2013 ()
----- AGAINST THE

JUDGMENT

IN CRA3042011 of ADDL. SESSIONS COURT, THRISSUR DATED2906-2013
AGAINST THE

JUDGMENT

IN ST1982010 of J.M.F.C., VADAKKANANCHERRY DATED0404-2011 REVISION
PETITIONER(S)/APPELLANT/ACCUSED: -----
AJEESH, AGED29YEARS, S/O.KUMARAN, EDATHARA HOUSE, THANIPADAM
DESOM, CHUVANAMANNU.P.O., THRISSUR. BY ADV. SRI.G.SREEKUMAR
(CHELUR) RESPONDENTS/RESPONDENTS/COMPLAINANT AND STATE OF
KERALA: ----- 1. MAKHBOOL.A,

MANAGING DIRECTOR, VARNA GLASS AND PLYWOODS TRADING PVT. LTD., XV/592 B, RAHMANIYA BUILDINGS, OTTUPURA, WADAKKANCHERRY.P.O., THRISSUR-680 582.

2. THE STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA AT ERNAKULAM-682 031. R2 BY PUBLIC PROSECUTOR SRI. LIJU V. STEPHEN THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 30/10-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: K. HARILAL, J.

----- Crl.R.P. No. 2135 of 2013

----- Dated this the 30th 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.304/11 on the files of the I Additional Sessions Judge, Thrissur. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in S.T.No.198/10 on the files of the Judicial First Class Magistrate's Court, Wadakkancherry. According to the impugned judgment, the Revision Petitioner is sentenced to pay a fine of Rs.41,500/- under Crl.R.P. No. 2135 of 2013 -:

2. :- Sec.138 of the N.I. Act and in default, to undergo simple imprisonment for one month. If the fine amount is realised, Rs.41,000/- (cheque amount + reasonable cost) shall be paid to the complainant as compensation under Sec.357(1)(b) of the Cr.P.C.

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 Crl.R.P. No. 2135 of 2013 -:

3. :- enforceable debt and Ext.P1 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 fine within four 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 Crl.R.P. No. 2135 of 2013 -:

4. :- 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. 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 four months, I am inclined to grant four 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 pay a fine of Rs.41,500/- (Rupees forty one thousand and five hundred only) within a period of four months from today and out of that, Rs.41,000/- (Rupees forty one thousand only) shall be given to the complainant/1st respondent as compensation under CrI.R.P. No. 2135 of 2013 -:

5. :- Sec.357(1)(b) of the Cr.P.C. ii. In default, the Revision Petitioner shall undergo simple imprisonment for a period of one month. The Criminal Revision Petition is disposed of accordingly. Sd/- (K. HARILAL, JUDGE) Nan/ //true copy//
P.S. to Judge

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