

K.Harshakumar Vs. the State of Kerala

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Court : Kerala

Decided On : Oct-29-2013

Judge : Honourable Mr.Justice Harun-Ul-Rashid

Appellant : K.Harshakumar

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE
HONOURABLE MR.JUSTICE HARUN-UL-RASHID TUESDAY, THE29H DAY OF
OCTOBER20137TH KARTHIKA, 1935 CrI.MC.No. 4951 of 2013 ()
----- AGAINST THE

ORDER

/

JUDGMENT

IN CC562004 of J.M.F.C.-I,KOTTARAKKARA AGAINST THE

ORDER

/

JUDGMENT

IN CRA6342003 of III ADDL.SESIONS COURT, KOLLAM
PETITIONER(S)/ACCUSED: ----- K.HARSHAKUMAR,

AGED61YEARS, S/O KUMARAN, KUMAR BUILDINGS, EZHUKONE, EZHUKONE POST, KOLLAM DISTRICT BY ADVS.SRI.T.MADHU SMT.C.R.SARADAMANI RESPONDENTS/ STATE/ DEFACTO COMPLAINANT(S): ----- 1. THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM68203.

2. RADHA BAI, AGED57YEARS, W/O GOPINATHAN, GOPI SADANAM, NEELESWARAM POST, KOTTARAKKARA, KOLLAM DISTRICT-691505.

3. RAJIMOL.G.R,AGED28YEARS, D/O GOPINATHAN, GOPI SADANAM, NEELESWARAM POST, KOTTARAKKARA, KOLLAM DISTRICT- 691505.

4. RAJEEV G.R, AGED25YEARS, S/O GOPINATHAN, GOPI SADANAM, NEELESWARAM POST, KOTTARAKKARA, KOLLAM DISTRICT-691505. R1 BY PUBLIC PROSECUTOR SRI RAJESH VIJAYAN R2-4 BY ADV. SMT.BINDUMOL JOSEPH THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON2910-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Crl.MC.No. 4951 of 2013 () ----- APPENDIX PETITIONER(S)' EXHIBITS ----- ANNEXURE A1 TRUE COPY OF THE

ORDER

DATED1911-2007 IN CRL R.P NO41182007 ON THE FILE OF THIS HON'BLE COURT. ANNEXURE A2 THE TRUE COPY OF THE RELATIONSHIP CERTIFICATE ISSUED BY THE VILLAGE OFFICER, KOTTARAKKARA. ANNEXURE A3 A TRUE COPY OF THE AGREEMENT DATED2606-2013 ENTERED INTO BETWEEN THE PETITIONER AND THE RESPONDENT2TO4 ANNEXURE A4 THE TRUE COPY OF THE MEMO FILED BY THE RESPONDENTS2TO4BEFORE THE LEARNED JUDICIAL FIRST CLASS MAGISTRATE'S COURT-I, KOTTARAKKARA IN C.C NO562004. ANNEXURE A5 THE TRUE COPY OF THE

ORDER

DATED1212-2012 IN CRL M.C NO38272012 ON THE FILE OF THIS HON'BLE COURT. RESPONDENT(S)' EXHIBITS: NIL ----- TRUE

COPY P.A TO JUDGE LSN HARUN-UL-RASHID, J.

----- Crl. M.C No. 4951 of 2013 ----- Dated this
the 29th day of October, 2013.

ORDER

Heard the learned counsel for the petitioner, learned Public Prosecutor and counsel for respondents 2 to 4. The petitioner is the second accused in C.C No. 56/2004 on the files of the Judicial First Class Magistrate Court-I, Kottarakkara. The offence alleged is punsihable under Section 138 of Negotiable Instruments Act. The learned Magistrate after trial convicted the accused for the offence and sentenced the petitioner to pay a fine of Rs.5,000/- with a default sentence of simple imprisonment for one month. The second accused was sentenced to undergo simple imprisonment for one year. The appeal preferred by the accused before the Sessions Court who was pleased to dismiss the above appeal by confirming the order of conviction and sentence passed by the learned Magistrate. The petitioner filed Crl.R.P No. 4118/2007. The same was disposed of vide judgment dated 19.11.2007. This court modified the sentence whereby the sentence imposed on the revision petitioners by the courts below were set aside and instead the revision petitioners were sentenced to deposit a fine of Rs.6,00,000/- within six months from the date of the judgment failing which the second revision petitioner was ordered to Crl. M.C No. 4951 of 2013 2 undergo simple imprisonment for three months by way of default sentence. This court also directed that as and when the fine amount is deposited the same shall be paid to the complainant by way of compensation under Section 357(1) of the Cr.P.C.

2. In the meantime the complainant expired on 01.08.2010 leaving the respondents 2 to 4 as his legal heirs. The petitioner has paid the entire amounts due to the legal heirs of the complainant. The civil disputes between the parties are also settled. Evidencing the settlement the respondents 2 to 4 have executed an agreement on 26.06.2013. The respondents 2 to 4 have agreed that the amount due to the husband of the second respondent and father of the respondents 3 and 4. The above agreement respondent 2 to 4 had excepted the amounts due to their predecessor complainant and the matter was finally settled.

The copy of the agreement dated 22.06.2013 marked as Annexure A3 .

3. It is submitted that on the basis of the directions issued by this court in the judgment in revision marked as Annexure-A1. The petitioner was under the impression that he will be exonerated from the liabilities if he pays the fine amount directly to the complainant. Respondents 2 to 4 are the legal heirs of the deceased complainant. Crl. M.C No. 4951 of 2013 3 In the above said facts and circumstances, the petitioner approach this court for a direction directing the Judicial First Class Magistrate Court-I, Kottarakkara to reckon the payment of compensation by the petitioner/accused in C.C No.56/2004 directly to the complainant/legal heirs of the complainant in the above case as sufficient execution of the sentence imposed by this court in Cr.R.P No. 4118/2007. HARUN-UL-RASHID, JUDGE. Isn

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