

K.M.Rajesh Vs. Palakkad Primary Co-opertive Agricultural and Rual Developme

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Court : Kerala

Decided On : Jan-02-2014

Judge : Honourable Mr.Justice K.Harilal

Appellant : K.M.Rajesh

Respondent : Palakkad Primary Co-opertive Agricultural and Rual Developme

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL THURSDAY, THE2D DAY OF JANUARY201412TH POUSHA, 1935 CrI.Rev.Pet.No. 12 of 2014 ()
----- CrI.A6062011 of ADDITIONAL SESSIONS COURT-IV, PALAKKAD DATED0411-2013 CC2202010 of JUDICIAL FIRST CLASS MAGISTRATE -II, PALAKKAD DATED3011/2011 REVISION PETITIONER(S)/APPELLANT/ACCUSED:

----- K.M.RAJESH,
S/O.K.M.RAJAN, 9/145, GAYATHRI UDGAMPOTTA, KODUNTHARAPULLY P.O., PALAKKAD. BY ADV. SRI.JACOB SEBASTIAN COMPLAINANT(S) / RESPONDENT AND STATE: -----

1. PALAKKAD PRIMARY CO-OPERATIVE AGRICULTURAL AND RUAL DEVELOPMENT BANK LTD., RACKET COURT ROAD, PALAKKAD REP. BY SECRETARY BHASKARAN, PIN-678001.

2. STATE REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM-682031. R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN. THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 0201-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: *stu* K.HARILAL, J.

= = = = = Crl.R.P.No.12 of 2014 = = = = = Dated
this the 2nd day of January, 2014

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.606/2011 on the files of the Additional Sessions Judge, Palakkad Division. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.220/2010 on the files of the Judicial First Class Magistrate's Court-II, Palakkad. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for one day till rising of the court and to pay a compensation of 1,49,400/- to PW1 under Sec.357(3) of the Code of Criminal Procedure. In default of payment, to undergo Crl.R.P.No.12 of 2014 2 simple imprisonment for three 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 said debt. I do not CrI.R.P.No.12 of 2014 3 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. 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 CrI.R.P.No.12 of 2014 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 five months, I am inclined to grant five 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 a compensation of CrI.R.P.No.12 of 2014 5 Rs.1,49,400/- (Rupees One lakh Forty Nine thousand Four hundred only) to the 1st respondent/ complainant within a period of five months from today under Sec.357(3) of the Cr.P.C. iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive

sentence of simple imprisonment as ordered above on or before 3rd June, 2014 with sufficient proof to show payment of compensation . iv. In default, the Revision Petitioner shall undergo simple imprisonment for a period of three months. The Criminal Revision Petition is disposed of accordingly. K.HARILAL, JUDGE. Stu
//True copy// P.A to Judge

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