

Javeed Vs. Suresh

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Court : Kerala

Decided On : Jan-02-2014

Judge : Honourable Mr.Justice K.Harilal

Appellant : Javeed

Respondent : Suresh

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL THURSDAY, THE 2D DAY OF JANUARY 2014 12TH POUSHA, 1935 Crl.Rev.Pet.No. 7 of 2014 () ----- Crl.A2272012 of ADDL.DISTRICT & SESSIONS COURT - III, PALAKKAD DATED 2011-2013 CC2732010 of JUDICIAL FIRST CLASS MAGISTRATE -II, PALAKKAD DATED 3004-2012 REVISION PETITIONER(S)/APPELLANT/ACCUSED : ----- JAVEED, S/o.RABIYA, AGED 28 YEARS, R.V.CHICKEN CENTRE, KOTTAYI ROAD, NEAR ANUGRAHA KALYANAMANDAPAM, KODUNTHIRAPULLY, PALAKKAD DISTRICT. BY ADV. SRI.JACOB SEBASTIAN COMPLAINANT(S)/RESPONDENTS & STATE: ----- 1. SURESH, S/o.RAJAN, SANGEETHA HOUSE, VALIYA GRAMAM, KODUNTHIRAPPULLY, PALAKKAD DISTRICT, PIN-679 513.

2. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. R1 BY ADV. SMT.SHAMSEERA.

C.ASHRAF R2 BY PUBLIC PROSECUTOR SRI.ROY THOMAS. THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 02-01-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: stn K.HARILAL, J.

= = = = = = = = = = = Crl.R.P.No. 7 of 2014 = Dated this the 2nd day of January, 2014

ORDER

The revision petitioner is the accused in C.C.No.273 of 2010 on the files of the Judicial First Class Magistrate' Court-II, Palakkad. He was prosecuted for the offence punishable under Sec.138 of the Negotiable Instruments Act on a complaint filed by the 1st respondent herein. After trial, the learned Magistrate found the revision petitioner guilty of the said offence and convicted thereunder. He was sentenced to undergo simple imprisonment for a period of six months and to pay a compensation of 2 lakhs to the complainant under Sec.357(3) of the Code of Criminal Procedure. In default of payment of compensation, he shall undergo simple imprisonment for another three months. Though he had preferred Crl.Appeal.No.227 of 2012 before the Additional District & Sessions Judge No.III, Palakkad Division, after re- Crl.R.P.No. 7 of 2014 2 appreciating the evidence on record, the learned Sessions Judge also confirmed the verdict of guilty and conviction but modified the sentence. The substantive sentence of simple imprisonment for six months was modified and reduced to simple imprisonment for three months and maintained rest of the sentence as such without any interference. This revision petition is filed challenging the concurrent findings of conviction and sentence.

2. Though this revision petition has been filed assailing the verdict of guilty on various grounds, the learned counsel for the revision petitioner submits that, after the pronouncement of the judgment in appeal, the revision petitioner had paid the entire amount directed to be paid as compensation to the complainant/1st respondent and now no amount is due from him.

3. Adv.Sri.K.N.Abhilash, the learned counsel appearing for the 1st respondent also submits that as submitted by the learned counsel for the revision Crl.R.P.No. 7 of

2014 3 petitioner, the 1st respondent had received the entire amount directed to be paid as compensation and now the 1st respondent has no subsisting grievance and he does not intend to proceed against the revision petitioner.

4. The learned counsel for the revision petitioner urged for modifying the substantive sentence of simple imprisonment imposed on the revision petitioner in view of the subsequent payment of the compensation as directed by the court. The prosecution 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. Thus, the compensatory aspect of remedy should be given much priority than punitive aspect. In the above view, I am inclined to reduce and modify the substantive sentence of simple imprisonment for three months to simple imprisonment for one day till rising of the court.

5. Consequently, In supersession of the sentence CrI.R.P.No. 7 of 2014 4 imposed by the trial court and modified by the appellate court, the revision petitioner is sentenced to undergo simple imprisonment for one day till rising of the court. It is made clear that the default sentence under the impugned judgment will not come into operation. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment for one day as ordered above on or before 3rd February, 2014. This revision petition is disposed of accordingly. K.HARILAL, JUDGE. Stu //True copy// P.A to Judge

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