

V.D.Mathew vs John V.D.*

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SooperKanoon Citation : sooperkanoon.com/1345188

Court : Kerala

Decided On : May-24-2023

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : Crl.Rev.Pet/2638/2003

Appellant : V.D.Mathew

Respondent : John V.D.*

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS WEDNESDAY, THE 24TH DAY OF MAY 2023 / 3RD JYAISHTA, 1945 CRL.REV.PET NO. 2638 OF 2003 AGAINST THE JUDGMENT IN CRL.A.NO. 250/2001 OF ADDITIONAL DISTRICT COURT,KOTTAYAM IN C.C.NO.877/1999 OF JUDICIAL MAGISTRATE OF FIRST CLASS - I,KANJIRAPPALLY REVISION PETITIONER/APPELLANT/COMPLAINANT: V.D.MATHEW AGE 65 S/O. DEVASIA, MAKAYIL HOUSE MATTAKKARA P.O, KOTTAYAM BY ADV SRI.LIJI.J.VADAKEDOM RESPONDENTS/RESPONDENTS ACCUSED & STATE: 1 JOHN V.D. (* EXPIRED) S/O DEVASIA, VADAKEDATHU, MATTAKKARA, KOTTAYAM 2 STATE OF KERALA

REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA ,ERNAKULAM 3 BABU SEBASTIAN S/O VD JOHN,
VADAKKEDATHU HOUSE, MATTAKKARA P.O,

KOTTAYAM - 686564 (ADDL. R3 IMPEADED AS PER ORDER

DATED 22/01/2020 IN CRL.M.A. 1/2020 IN CRL.R.P. BY ADV TOM E. JACOB
OTHER PRESENT: Sri. C.N.PRABHAKARAN PUBLIC PROSECUTOR THIS
CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
24.05.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

===== Dated this the 24th day of
May, 2023

ORDER

Revision petitioner was the accused in C.C.No.877/1999 on the

files of the Judicial First Class Magistrate-I, Kanjirappally. He was found guilty for the offence under Section 138 of the Negotiable Instruments Act, 1881, and was sentenced to undergo simple imprisonment for three months. In the appeal preferred as Crl.A.No.250/2001 before the Additional Sessions Court, Kottayam, the conviction was confirmed but the sentence was modified to simple imprisonment for one month and also to pay an amount of Rs.50,000/- as compensation. Aggrieved by the conviction and sentence imposed upon him, this revision petition has been preferred.

2. During the pendency of this revision petition, the complainant

who is arrayed as first respondent herein died and his legal heir was impleaded as additional 3rd respondent by order dated 22.01.2020. In the meantime, 3rd respondent and the revision petitioner is purported to have entered into a settlement. Consequent to the settlement, Crl.M.A.No.1/2022 was filed seeking to compound the offence based upon the said settlement.

3. In the decision in *Damodar S. Prabu v. Sayed Babalal H.*

[2010 (5) SCC 663], Supreme Court had issued guidelines to be followed for compounding the offences and directed costs to be imposed at different rates for different levels at which the matter is

settled. It was further observed in the aforesaid judgment that, imposition of costs is a matter of discretion by the competent court and the same can even be reduced, based upon specific facts and circumstances of the case. Subsequently, in the decision in *Madhya Pradesh State Legal Services Authority v. Prateek Jain and Another* [2014 (10) SCC 690], Supreme Court went on to observe that the court can, not only reduce the costs but can even waive the same.

4. A perusal of the facts in the instant case, reveal that the

accused is alleged to have issued a cheque dated 12.10.1999 for an amount of Rs.50,000/- in favour of the complainant which, on presentation was dishonoured. Almost 24 years have elapsed since, the cheque was presented. The complainant expired and the matter has been settled with the legal heir of the said complainant. Having regard to the long period that has elapsed, since the presentation of the cheque and taking note of the settlement arrived at between the parties, I am of the view that this is a fit case where the settlement

arrived at between the parties can be acted upon and the costs suggested by the Supreme Court in *Damodar S. Prabu* (Supra) can be entirely waived on.

5. In view of the above, on the basis of settlement arrived at

between the parties, as accepted by this Court in the order in CrI.M.A. No.1/2022, the conviction and sentence imposed upon the petitioner in C.C.No.877/1999 on the files of the Judicial First Class Magistrate-I, Kanjirappally as confirmed by judgment dated 08.08.2003 in CrI.A.No.250/2001 on the files of the Additional Sessions Court, Kottayam, is hereby set aside and the revision petitioner is acquitted. Criminal revision petition is allowed as above. Sd/- BECHU KURIAN THOMAS JUDGE jka/24.05.23.