

Girish Vs. Muthoot Capital Service (P) Ltd.

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Court : Kerala

Decided On : Nov-06-2006

Reported in : III(2007)BC690; 2007(1)KLT16

Judge : R. Basant, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138; [Indian Penal Code \(IPC\), 1860](#) - Sections 68 and 69

Appeal No. : Crl. R.P. No. 3874 of 2006

Appellant : Girish

Respondent : Muthoot Capital Service (P) Ltd.

Advocate for Def. : C.K. Suresh, Public Prosecutor

Advocate for Pet/Ap. : Shaijan C. George,; John Varghese and; S.A. Sherly,

Disposition : Revision petition dismissed

Judgement :

ORDER

R. Basant, J.

1. This Revision Petition is directed against a concurrent verdict of guilty, conviction and sentence in a prosecution under Section 138 of the Negotiable Instruments Act. The petitioner now faces a sentence of imprisonment till rising of court and to pay an amount of Rs. 1,00,000/- as compensation and in default to undergo simple imprisonment for a period of two months.

2. Called upon to explain the nature of the challenge which the petitioner wants to mount against the impugned concurrent judgments, the learned Counsel for the petitioner submits that the petitioner does not want to challenge the verdict of guilty, conviction, sentence, the direction to pay the compensation and the default sentence. Having gone through the concurrent judgments I reckon that as an informed, fair and reasonable stand. The impugned judgments are found to be absolutely justified and unexceptionable.

3. Why then has the petitioner come to this Court? Learned Counsel for the petitioner submits that the petitioner is willing to straightaway deposit the compensation amount. But the petitioner apprehends that the amount having not been paid within the period stipulated by the appellate court, petitioner may have to undergo the default sentence even if he makes payment of the compensation amount now.

4. The apprehension appears to be totally unfounded. Similar requests are made in many other petitions also. It is hence that I propose to consider this apprehension of the petitioner in detail. Whenever a direction for payment of fine/compensation is issued along with the rider that in default of payment of fine/ compensation, the indictee must undergo default sentence, such default sentence shall lapse at any time when the payment

is made either before or after the default sentence starts running. The apprehension aired by the counsel appears to me to be totally unjustified. When the court concerned or the superior courts grant time for payment and stipulates a date for payment it only means and implies that the default sentence shall not be executed till that day. Action should not be taken to execute the sentence till the prescribed date. If the accused does not appear on or before that day, the court can enforce the presence of the accused by issue of coercive process or by taking action against the sureties if grounds exist. But such stipulations cannot be read or understood to imply that thereafter even if the amount of fine/compensation were paid in full the default sentence will have to be undergone. This appears to be clear and unambiguous from Sections 68 & 69 of the I.P.C., which read as follows

68. Imprisonment to terminate on payment of fine. - The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

69. Termination of imprisonment on payment of proportional part of fine - If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

The language of the Sections is clear and eloquent. When payment is made there can be no question of any default sentence.

5. This Revision Petition is in these circumstances dismissed with the observation/direction that if the petitioner makes the payment of the compensation amount at any time the default sentence shall not thereafter be enforced against him.

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