

(2012) 01 KL CK 0101
In the High Court Of Kerala
Case No : Criminal R.P. No. 190 of 2012

Kochupillai

APPELLANT

Vs

O.K. Eldhose and Kerala State

RESPONDENT

Date of Decision : 20-01-2012

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2012) 01 KL CK 0101

Hon'ble Judges : N.K. Balakrishnan, J

Bench : Single Bench

Advocate : Rajiv Nambisan, for the Appellant; Seena Ramakrishnan, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Balakrishnan, J.—Petitioner was convicted by the learned Magistrate for offence punishable under Sec. 138 of N.I. Act and he was sentenced to undergo S.I. for three months and also to pay Rs. 3,80,000/- as compensation to the complainant. His appeal was dismissed by the learned Addl. Sessions Judge (Adhoc-III), N. Paravur.

2. Learned counsel for the petitioner has addressed arguments challenging the conviction also. It was stated that only Rs. 50,000/- was borrowed from the complainant and the allegation that he had borrowed Rs. 3,80,000/- is not correct. The trial court as well as the appellate court appreciated the evidence and found that the defence plea is unacceptable. Accepting the complainant's case, petitioner was convicted. I find no reason to hold otherwise. The conviction is thus confirmed.

3. Learned counsel for the petitioner submits that the complainant/respondent, realising the fact that the amount as shown in the complaint was not due from the accused to the complainant, has in fact agreed to settle the matter for a lesser sum. Learned counsel submits that the sentence may be modified.

In the result, this CrI. R.P. is disposed of as stated below :-

The conviction is confirmed. In supersession of the sentence awarded by the courts below, the petitioner is sentenced to undergo imprisonment till the rising of the court and to pay a sum of Rs. 3,80,000/- as compensation. If actually the petitioner and the complainant have settled the matter, the petitioner can take the complainant to the court on the day when the accused surrenders before the trial court to undergo imprisonment till the rising of the court. If the complainant files an affidavit (the identity of the complainant should be testified by the counsel appearing for him) stating that the entire compensation has been received, necessary entries shall be entered in the Fine Register and the case record, which shall be treated as due compliance of the order passed by this Court. The petitioner will surrender before the learned Magistrate on or before 23.2.2012 to undergo imprisonment till the rising of the court and to comply with the remaining part of the order/sentence.