
(2013) 11 KL CK 0051

In the High Court Of Kerala

Case No : Criminal Rev. Petition No. 2251 of 2013

M/s. Benhur Chits (P) Ltd.

APPELLANT

Vs

Jayan K. Madhu and State of Kerala

RESPONDENT

Date of Decision : 21-11-2013

Acts Referred:

Citation : (2013) 11 KL CK 0051

Hon'ble Judges : K. Harilal, J

Bench : Single Bench

Advocate : M. Meena John, for the Appellant; Liju V. Stephen, Public Prosecutor for R2, for the Respondent

Final Decision : Disposed Off

Judgement

K. Harilal, J.—The revision petitioner is the complainant in C.C. No. 192/11 on the files of the Additional Chief Judicial Magistrate's Court (EO), Ernakulam. The above complaint was filed against the respondent/accused alleging the offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881. It is the case of the complainant that in discharge of legally enforceable debt, the accused executed a cheque for Rs. 1,94,809/- dated 15/3/2011 in favour of the revision petitioner. When the cheque was presented for encashment, the same was dishonoured for want of sufficient funds. Thus, the respondent/accused committed the offence alleged against him. On 22/6/13, the complainant was absent and no process fee was paid. Consequently, the learned Magistrate dismissed the complaint under Sec. 204(4) of the Cr.P.C. This order is under challenge in this revision petition.

2. The learned counsel for the revision petitioner submits that on 31/5/11, the Additional CJM's Court was pleased to issue summons to the respondent. Since there was no response, a bailable warrant was issued to the respondent on 13/2/12. On 1/3/12, the counsel for the revision petitioner had entrusted his Clerk a postal cover for Rs. 25/- along with acknowledgement card to deposit the process fee to issue warrant to the respondent/accused. But subsequently, after

the dismissal of the complaint, it is learnt that due to an inadvertent omission on the part of the Clerk in noting down the posting date on 22/6/13 the matter could not be represented on that date. Consequently, the revision petitioner could not take steps on subsequent dates also.

3. The learned counsel for the revision petitioner prays for granting a further opportunity to prosecute the complaint against the accused. The learned counsel further submits that the dishonoured cheque was issued for an amount of Rs. 1,94,809/-. So, if the revision petitioner is not allowed to prosecute the accused, certainly, he will be deprived of his remedy to get compensated by the accused.

4. The offence u/s 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. The loss sustained by the dishonour of the cheque can be restored by way of compensation. Thus, the compensatory aspect of remedy should be given much priority than punitive aspect. In the above view, I am inclined to take a lenient view and the revision petitioner is given a further opportunity to prosecute the accused on condition. The impugned order will stand set aside on condition that the revision petitioner shall pay a cost of Rs. 2,000/- (Rupees two thousand only) to the court below within a period of one month from the date of receipt of a copy of this order and the learned Magistrate is directed to restore the complaint on the files and proceed in accordance with law, on compliance of the above condition. Needless to say, in the event of failure to comply the above condition within the specified time, the impugned order will stand in force.

This revision petition is disposed of as above.