

(2008) 06 KL CK 0045
In the High Court Of Kerala
Case No : Writ Petition (C) No. 16004

Sreedharan N.

APPELLANT

Vs

G. Ramachandran Pillai

RESPONDENT

Date of Decision : 16-06-2008

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2008) 3 ILR (Ker) 79 : (2008) 2 KLJ 580

Hon'ble Judges : R. Basant, J

Bench : Single Bench

Advocate : A. Ahzar, for the Appellant; Gikku Jacob, GP, for the Respondent

Final Decision : Allowed

Judgement

R. Basant, J.—A pernicious practice appears to be in vogue before the subordinate courts in prosecutions u/s 138 of the Negotiable Instruments Act. The cases are posted to distant dates by notification without the presiding officer applying his mind to the question whether service is complete or not. The practice definitely deserves to be frowned upon and discouraged. The practice has got to be discontinued forthwith.

2. The petitioner is the complainant in a prosecution u/s 138 of the Negotiable Instruments Act. He is aged 72 years. Cognizance has been taken. The accused has not entered appearance so far. The complaint was filed on 1/3/2007. The case was then posted to 24/11/2007. On that day, the case was adjourned by notification to 26/3/2008. On 26/3/2008, the case was adjourned to 2/4/2008 on 2/4/2008, the case was adjourned to 18/2/2009 - all by notification. The service is not complete yet.

3. Finding the procedure adopted to be unjustified and improper, report of the learned Magistrate was called for. The report perhaps confirms the apprehension and only aggravates the situation. The learned Magistrate reports that no steps have been taken by the complainant so far issue of process to the accused. No

orders under Sections 203 or 204 is seen passed also.

4. Subordinate criminal courts are flooded with complaints u/s 138 of the Negotiable Instruments Act and the superior courts in their anxiety to avoid needless waste of time in the name of calling work (which is no productive work at all) has been directing that it is not necessary to post the cases unnecessarily with periodic frequency. Once the appearance is complete, the cases can be posted to a date when they are likely to be taken up - even if the same be a distant date. It is unnecessary to post the case-ritualistically with such regular frequency. Formerly the case used to be posted once a month or once in two months - only to be called and adjourned. To prevent such callous and irresponsible waste of time, which the bar also unfortunately appears to relish and welcome, such directions enabling posting to distant dates, on which the case is likely to be taken up for trial, are given. But such a direction given in the interests of early disposal of cases and to avoid wastage of time of court and inconvenience to litigants cannot be understood out of the context and practice like the one which appears to have been followed in this case - of adjourning the cases to distant dates without and before ascertaining that the steps are complete, must certainly be discouraged and not permitted.

5. It is made clear that the procedure adopted by the learned Magistrate is thoroughly incorrect. Before ensuring that the service is complete, courts cannot post the case to such distant dates. Once appearance is complete, to avoid the trauma of litigants unnecessarily being obliged to come to courts, the courts can and shall be justified in adjourning the cases to such distant dates.

6. There is a dispute raised in this case by the learned Counsel for the petitioner before me as to, whether steps have been taken by the petitioner by now to issue process to the accused. Within a period of fifteen days, the petitioner shall take steps if such steps have not already been taken. The learned Magistrate shall ensure that the service is effected by issue of appropriate directions to the police before the next date of posting, that is 4/7/2008. The learned Magistrate must ensure that the case is disposed of as expeditiously as possible, at any rate, within a period of four months from 4/7/2008. This Court has time and again been issuing directions that the courts must imbibe the sense of expedition which must be shown by any reasonable person while dealing with proceedings in which senior citizens are parties. I expect the learned Magistrate to imbibe that sense of expedition and comply with the directions above.

7. This writ petition is in these circumstances allowed. The above directions are issued. Compliance shall be reported to this Court.