

(2015) 09 KL CK 0003

In the High Court Of Kerala

Case No : C.M. Appln. No. 4464 of 2015 in Crl. R.P. No. 2725 of 2010

Subhash Sait

APPELLANT

Vs

Sree Gokulam Chits and Finance and Others

RESPONDENT

Date of Decision : 11-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357(1), 362, 397, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 68, 69

Citation : (2015) 4 KHC 741 : (2015) 4 KLT 497

Hon'ble Judges : Bhaskaran Pillai Sudheendra Kumar, J.

Bench : Single Bench

Advocate : G. Sreekumar and K. Ravi, for the Appellant; Sreejith, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskaran Pillai Sudheendra Kumar, J.—The short question that arises for consideration in this application is as to whether a convict sentenced to fine, if fails to deposit the fine within the time granted by the High Court or Sessions Court, can subsequently deposit the fine without any further direction from the High Court or Sessions Court, as the case may be, to avoid the default sentence. The facts leading to the present application can be briefly stated as follows:

"The accused in ST No. 2515/2008 on the files of the Court of the Judicial Magistrate of First Class-III, Palakkad filed the above Crl Revision Petition challenging the concurrent finding of conviction and sentence passed by the Courts below under Section 138 of the Negotiable Instruments Act, 1881 (for short "the NI Act"). A learned Single Judge of this Court as per Order dated 02/12/2010 in Crl RP No. 2725 of 2010 confirmed the conviction and modified the sentence to fine of Rs. 1,88,000/- with a default clause for simple imprisonment for three months. It was also directed that if the fine amount is realised, the entire amount shall be given to the complainant under Section

357(1) Cr.P.C.. The revision petitioner was also permitted by the High Court either to deposit the said fine amount before the Court below or to directly pay the compensation to the complainant within six months from the date of order. The High Court directed the revision petitioner to produce a memo before the Trial Court in case of direct payment. The period for payment of fine fixed by the Court was later extended once. However, the revision petitioner could not remit the amount within the extended time also. Subsequently, he paid the amount in instalments to the complainant and the matter was informed to the Trial Court. However, the Trial Court was not prepared to accept the said payment as the said payment was effected beyond the period prescribed by the High Court. The Trial Court also initiated coercive steps against the revision petitioner to recover the amount. In the said circumstances, the revision petitioner has filed the present application, praying for granting extension of time."

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

3. The question now arises for consideration is as to whether the payment made by the applicant directly to the complainant, as directed by the High Court, after the period stipulated by the High Court can be accepted by the Trial Court, as sufficient compliance of the direction of the High Court in the Criminal Revision Petition without any further order from the High Court granting enlargement of time.

4. The learned counsel for the petitioner, relied on the decision of a Division Bench of this Court in *Sreedharan v. Bharathan* , 2014 KHC 2522 : 2014 (1) KLT 236 and argued that permission of this Court is necessary for accepting the payment by the Trial Court as the payment was made beyond the period stipulated by this Court.

5. In *Sreedharan v. Bharathan* (supra), the issue before the Court was as to whether the High Court would be justified in enlarging the time already fixed for payment of fine while disposing of Criminal Revision Petitions in exercise of its revisional powers under Section 397 Cr.P.C. by resorting to its inherent powers under Section 482 Cr.P.C.. Incidentally, the Court in that case also decided the question as to whether invocation of the powers under Section 482 Cr.P.C. for the purpose of enlarging the time fixed under an order passed in revision is permissible in view of the restriction prescribed by Section 362 Cr.P.C.. The Court in *Sreedharan* (supra) held that only in very exceptional circumstances, the time for payment of fine/compensation amount can be extended by the High Court. The Court further held in the above said decision thus:

"We re-iterate that the powers under Section 482 Cr.P.C. can be invoked by filing extension/enlargement of application like the one filed by the revision petitioners in these cases only on genuine and pressing reasons and the power should be invoked only when the High Court is convinced that the inability of the concerned accused to make the payment was due to reasons beyond his control. Relief should be granted only after ensuring that the same will result in rendition of

justice to both sides and will bring forth complete and final quietus on the issues between the parties."

6. It is clear from a reading of the decision in *Sreedharan v. Bharathan* (supra) that the Division Bench did not pronounce any judicial precedent that if time is fixed by the High Court for payment of fine/compensation while disposing of Criminal Revision Petitions, the High Court alone is having the jurisdiction to permit the convict to deposit the fine/compensation beyond the period fixed by the High Court. The legal principle stated in the said decision is that the High Court is having the inherent jurisdiction under Section 482 Cr.P.C. to grant enlargement of time for making payment of fine/compensation even after the disposal of the revision petition by the High Court, in exceptional cases.

7. In this context, it will be profitable to read and understand the two provisions of law which are relevant. The said provisions are Sections 68 and 69 of IPC, which are extracted hereunder:

"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 illustration to Section 69 of the IPC is also relevant, which is extracted hereunder:

"A is sentenced to a fine of one hundred rupees and to four months" imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment. A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged."

8. It is clear from the provisions of Section 69 of IPC and its illustration that even when the convict undergoes imprisonment, the said imprisonment terminates if the payment of proportional part of fine is made. Section 68 of IPC makes it clear that the default sentence shall terminate whenever the fine is either paid or levied by the process of law. The purpose of the Courts granting time for payment of fine is only to enable the convict to get some time to make payment

of the fine. It merely indicates that till the expiry of the time granted by the Court, the convict will not be sent to jail for failure to pay the fine. If no time is fixed by the Court, the convict will be required to deposit the fine immediately after its imposition. Thus, it is explicit from the provisions of Sections 68 and 69 of IPC that the Court has power to arrest the convict and sent him to jail to serve out the default sentence if the convict fails to deposit the fine before the Court within the time stipulated by the Court. However, it cannot be read and understood to imply that the right of the convict under Sections 68 and 69 of IPC to deposit the fine is taken away by fixing a period for deposit of the fine by the Court.

(emphasis supplied)

9. A learned Single Judge of this Court in K.G. Girish Kumar Vs. Muthoot Capital Service Pvt. Ltd. and Another, held that when the Court concerned or the superior Court grants 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 and action should not be taken to execute the sentence till the prescribed date and if the accused does not appear on or before that day, the Court can enforce the presence of the said accused by issuance of coercive process or by taking action against the sureties, if grounds exist.

10. The Division Bench of this Court in Sreedharan (supra) had no occasion to consider the scope and ambit of Sections 68 and 69 of IPC. In the above decision, their Lordships further held thus:

"It is also clear that when there are statutory provisions providing expressly for granting the reliefs sought for, it is those provisions which are to be invoked and not the inherent powers recognized under Section 482 ."

Thus, it is clear from the above passage that eventhough the High Court has inherent jurisdiction to entertain application for enlargement of time for payment of fine, if there is statutory provision providing expressly for granting the relief, the said statutory provision has to be normally resorted to.

11. The upshot of the above discussion is that the time granted by the High Court in the above Revision Petition for payment of fine would merely mean that the realisation was deferred till the time granted. The wrong notion entertained by the Court below, that since the revision petitioner did not deposit the amount before the expiry of the time stipulated by the High Court, the revision petitioner is required to undergo default sentence, is against the provisions of Sections 68 and 69 of IPC. Since the revision petitioner had already given the amount to the complainant as directed in the order of the High Court, the Trial Court was not justified in not accepting the receipt produced by the revision petitioner as sufficient compliance with the direction of payment of fine by the revision petitioner.

12. It is noticed that numerous applications are being filed before the High Court

and the Sessions Court for enlargement of time for the deposit of fine as the Trial Courts refuse to accept the fine/compensation after the period stipulated by the superior Courts, even after the decision of this Court in *Gireesh v. Muthoot Capital* (supra). It is to be remembered that the default sentence is not punitive, but is only a measure to enforce payment of fine/compensation ordered by the Court. I make it clear that it is illegal, incorrect and unjust to refuse to permit the convict to deposit the fine amount after the date stipulated by the High Court/Sessions Court on the mere reason that no direction for extension has been granted by the High Court/Sessions Court. In the result, this application stands dismissed with the direction that the payment made by the revision petitioner directly to the complainant in this case, after the period stipulated by the High Court, should be accepted by the Trial Court, as sufficient compliance of the order of the High Court, in the Crl Revision Petition.

Registry will communicate a copy of this order to all the District and Sessions Judges who will ensure that the copy of the order is circulated among all the Judicial Officers in their respective districts.