

Kerala High Court

K.V.Varghese vs State Of Kerala on 27 January, 2009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Crl.Rev.Pet.No. 4114 of 2008()

1. K.V.VARGHESE, 40 YEARS  
... Petitioner

Vs

1. STATE OF KERALA, REP. BY THE PUBLIC  
... Respondent

2. C.N.ACCHYA, S/O.MONNAIAH, R/AT.CHAKKARAM

For Petitioner :SRI.A.T.ANILKUMAR

For Respondent :PUBLIC PROSECUTOR

The Hon'ble MR. Justice M.SASIDHARAN NAMBIAR

Dated :27/01/2009

O R D E R

M.SASIDHARAN NAMBIAR, J.

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Crl.R.P. NO. 4114 OF 2008  
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Dated this the 27th day of January,2009

ORDER

Revision petitioner is the accused and second respondent the complainant in S.T.447/2006 on the file of Judicial First Class Magistrate Court II, Sulthan Bathery. Revision petitioner was convicted and sentenced to simple imprisonment for six months and a compensation of Rs.75,000/- and in default simple imprisonment for two months. Revision petitioner is challenging the conviction and sentence before Additional Sessions Court, Kalpetta in Crl.A.124/2007. Learned Additional Sessions Judge on reappreciation of evidence confirmed the conviction and sentence and dismissed the appeal. It is challenged in the revision.

2. Learned counsel appearing for the revision petitioner was heard.

3. Learned counsel submitted that in view of the evidence on record and the concurrent findings of fact revision petitioner is not challenging the conviction but sentence may be modified and revision petitioner may be granted six months time to pay the compensation.

4. On going through the judgments of the courts below, I find no reason to interfere with the conviction.

5. Evidence establish that revision petitioner borrowed Rs.70,000/- and towards its repayment issued Ext.P1 cheque which was dishonoured for want of sufficient funds when presented for encashment. It was also established that second respondent had complied with all the statutory formalities provided under section 138 and 142 of Negotiable Instruments Act. In such circumstance, conviction of the revision petitioner for the offence under section 138 of Negotiable Instruments Act is perfectly legal.

6. Then the only question is regarding the sentence. So long as the sentence is not altered or varied against the interest of second respondent, it is not necessary to issue notice to second respondent. As per the sentence awarded by the Magistrate as confirmed by learned Sessions Judge second respondent is to get a compensation of Rs.75,000/-. Ext.P1 cheque is for Rs.70,000/-. In such circumstance, considering the entire facts and circumstance of the case, interest of justice will be met if the sentence is modified to imprisonment till rising of court and fine with a direction to pay compenstion out of the fine so realised.

Revision is allowed in part. Conviction of the revision petitioner for the offence under section 138 of Negotiable Instruments Act is confirmed. Sentence is modified. Revision petitioner is sentenced to imprisonment till rising of court and a fine of Rs.76,000/- and in default simple imprisonment for two months. On realisation of fine, Rs.75,000/- to be paid to second respondent as compensation under section 357(1)(b) of the Code of Criminal Procedure. Revision petitioner is granted six months time to pay the fine. Revision petitioner is directed to appear before the Judicial First Class Magistrate, Sulthan Bathery on 27.7.2009.

M.SASIDHARAN NAMBIAR JUDGE tpl/-

M.SASIDHARAN NAMBIAR, J.

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W.P.(C).NO. /o6

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JUDGMENT SEPTEMBER,2006