

Kerala High Court

Baburaj.V. vs Self Growth Nidhi Ltd on 12 January, 2011

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Crl.Rev.Pet.No. 103 of 2011()

1. BABURAJ.V., AGED 45 YEARS,  
... Petitioner

Vs

1. SELF GROWTH NIDHI LTD.,  
... Respondent

2. STATE OF KERALA, REP.BY

For Petitioner :SRI.P.K.VARGHESE

For Respondent : No Appearance

The Hon'ble MR. Justice V.RAMKUMAR

Dated :12/01/2011

O R D E R

V.RAMKUMAR, J.

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Crl.R.P.No.103 of 2011

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Dated this the 12th day of January, 2011

O R D E R

In this Revision Petition filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner, who was the accused in S.T.No.910 of 2007 on the file of the J.F.C.M, Kalpetta, challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act'). The cheque amount was `5,63,000/- (Rupees five lakhs sixty three thousand only). The compensation ordered by the lower appellate court is `5,63,000/- (Rupees five lakhs sixty three thousand only).

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision.

4. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant, that the complainant had validly complied with clauses (a) and (b) of the proviso to Section 138 of the Act. and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the conviction. The said conviction has been recorded after a careful evaluation of the oral and documentary evidence. This Court sitting in the rarefied revisional jurisdiction will be loath to interfere with the findings of fact recorded by the Courts below concurrently. I do not find any error, illegality or impropriety in the conviction so recorded concurrently by the courts below and the same is hereby confirmed.

5. What now survives for consideration is the legality of the sentence imposed on the revision petitioner. No doubt, now after the decision of the Apex Court in *Vijayan v. Sadanandan K. and Another* (2009) 6 SCC 652 it is permissible for the Court to slap a default sentence of imprisonment while awarding compensation under Sec. 357 (3) Cr.P.C. But, in that event, a sentence of imprisonment will be inevitable. I am, however, of the view that in the facts and circumstances of this case a sentence of fine with an appropriate default sentence will suffice. Accordingly, for the conviction under Section 138 of the Act the revision petitioner is sentenced to pay a fine of `5,68,000/- (Rupees five lakhs sixty eight thousand only). The said fine shall be paid as compensation under Section 357 (1) Cr.P.C. The revision petitioner is permitted either to deposit the said fine amount before the Court below or directly pay the compensation to the complainant within 7 months from today and produce a memo to that effect before the trial Court in case of direct payment. If he fails to deposit or pay the said amount within the aforementioned period he shall suffer simple imprisonment for three months by way of default sentence.

In the result, this Revision is disposed of confirming the conviction entered but modifying the sentence imposed on the revision petitioner.

Dated this the 12th day of January, 2011.

V. RAMKUMAR, JUDGE.

sj