

Kerala High Court

K.J.Babu vs The State Of Kerala on 2 April, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

CrI Rev Pet No. 1130 of 2008()

1. K.J.BABU,VENGAYIL HOUSE,
... Petitioner

Vs

1. THE STATE OF KERALA
... Respondent

2. M.S.RAJAN, 'SAPTASWARA'

For Petitioner :SRI.VIVEK CHANDRAN

For Respondent :PUBLIC PROSECUTOR

The Hon'ble MR. Justice V.RAMKUMAR

Dated :02/04/2008

O R D E R

V.RAMKUMAR, J.

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CrI.R.P. No. 1130 of 2008
.....

Dated, this the 2nd day of April,2008.

O R D E R

In this Revision petition filed under Section 397 read with Section 401 Cr.P.C. the petitioner who was the accused in S.T. No. 59 of 2006 on the file of the Judicial First Class Magistrate-I, Kottayam challenges the conviction entered and the sentence passed against him for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

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

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (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 above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether what should be the proper sentence to be imposed on the revision petitioner. Having regard to the facts and circumstances of the case, I am inclined to modify the sentence imposed on the revision petitioner. In the light of the recent decision of the Supreme Court in *Ettappadan Ahammedkutty v. E.P. Abdullakoya* (2008(1) KLT 851) rendered on 3-8- 2007 in Crl. Appeal 1013 of 2007, default sentence cannot be imposed for the enforcement of an order for compensation under Section 357 (3) Cr.P.C. Accordingly, for the conviction under Section 138 of the Act the revision petitioner is sentenced to pay a fine of Rs.25,000/- (Rupees twenty five 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 three 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.

V. RAMKUMAR, JUDGE.

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