

IN THE HIGH COURT OF KERALA AT ERNAKULAM**PRESENT****THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN****THURSDAY, THE 2ND DAY OF NOVEMBER 2023 / 11TH KARTHIKA, 1945****OP (CRL.) NO. 257 OF 2020****AGAINST THE ORDER/JUDGMENT ST 1402/2010 OF JUDICIAL MAGISTRATE
OF FIRST CLASS -II (MOBILE), KOTTAYAM****PETITIONER/S:**

AMBILIMOL
AGED 42 YEARS
D/O LATE MADHAVAN NAIR, PUTHUPARAMBILCHALAYIL HOUSE,
CHANGANASSERY P.O.-686535, KOTTAYAM DISTRICT .

BY ADVS.
K.GOPALAKRISHNA KURUP (SR.)
SMT.ANUROOPA JAYADEVAN
SHRI.ASHRUTH NASER
N.K.SUBRAMANIAN
N.C.MOHANAN (K/754/1994)
ABRAHAM MATHAN (K/596/2017)
ATHUL TOM (K/1424/2018)

RESPONDENT/S:

- 1 G.RAJESH
S/O K.GOPINATHA PILLAI, RAJASHREE HOUSE, VIJAYAPURAM
P.O.KOTTAYAM-686 010.
- 2 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, KOCHI-682 031.

OTHER PRESENT:

SRI HRITHWIK CS, PP

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
02.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

O.P.(Crl.) No. 257 of 2020

Dated this the 2nd day of November, 2023

JUDGMENT

The petitioner is the legal heir of the original complainant in ST No.1402/2010 on the file of the Judicial First Class Magistrate Court-II (Mobile), Kottayam. The above case was initiated by the mother of the petitioner under Sec. 138 of the Negotiable Instruments Act. The trial court convicted the accused and sentenced to undergo imprisonment till rising of the court and to pay compensation of Rs. 1,01,117/- under Sec. 357(3) Cr.P.C. It was also ordered that in default of payment of compensation, the accused should undergo simple imprisonment for a further period of four months. An appeal was filed challenging the conviction and the sentence, but the same was confirmed by the Sessions Court, Kottayam as evident by Ext.P1. Pending the above appeal, the complainant

died and therefore, the appellate court in Ext.P1 clearly stated that the accused shall pay an amount of compensation to PW2 Ambilimol, who is the petitioner herein. After Ext.P1 judgment, the accused Vijayakumari also died on 24.2.2018. The grievance of the petitioner is that the compensation is not recovered in accordance with Sec. 421 r/w 431 Cr.P.C. The petitioner filed an application before the Judicial First Class Magistrate Court-II, Kottayam in this regard as evident by Ext.P5. In Ext.P5, it is specifically pleaded that the deceased accused has got right in certain items of property. But, the learned Magistrate as per Ext.P6 order, dismissed the same stating that the petitioner has not proved the same. Hence, this CrI.M.C.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor. There is no appearance for the 1st respondent.

3. This Court perused Ext.P6 order. After going through the above order, I am of the considered opinion that the finding of the trial court to the effect that it is the duty of the petitioner

to prove that there is property to the deceased accused cannot be accepted. As per Sec. 421 r/w 431 Cr.P.C., it is the duty of the court to recover the amount as per law and pay the amount to the petitioner. If there is any dispute regarding the property, the court has got jurisdiction to get the report from the revenue authorities. Therefore, I am of the considered opinion that Ext.P6 will not stand. Hence, Ext.P6 can be set aside and the trial court can be directed to reconsider the matter in accordance with law.

Therefore, this O.P.(Crl.) is allowed in the following manner:

- 1) Ext.P6 is set aside.
- 2) Judicial First Class Magistrate Court-II (Mobile), Kottayam will take appropriate steps under Secs. 421 r/w 431 Cr.P.C. to recover the compensation amount from any property in which the deceased accused has got right.

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

SKS

APPENDIX OF OP (CRL.) 257/2020

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF THE JUDGMENT OF THE SESSIONS COURT KOTTAYAM DIVISION DATED 71.2015 IN CRIMINAL APPEAL NO 268/2013
EXHIBIT P2	TRUE COPY OF THE ARREST WARRANT DATED 27.12.2017 ISSUED BY THE JUDICIAL FIRST CLASS MAGISTRATE-11 KOTTAYAM ADDRESSED TO THE SUB HOUSE OFFICER OF POLICE MANARCADU STATION
EXHIBIT P3	TRUE COPY OF JUDGMENT OF THIS OF THIS HON'BLE COURT DATED 2.2.2018 IN CRL.MC 1146/2018
EXHIBIT P4	TRUE COPY OF THE DEATH CERTIFICATE ISSUED BY THE VIAJAYAPURAM GRAMA PANCHAYATH
EXHIBIT P4 (A)	TRUE COPY OF THE REPORT DATED 22.10.2018 SUBMITTED BY THE THAHASILDAR (REVENUE RECOVERY) KOTTAYAM
EXHIBIT P5	TRUE COPY OF THE PETITION C.M.P IN S.T 1402/2020 DATED 26.2.2018 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE-11 KOTTAYAM
EXHIBIT P5 (A)	TRUE COPY OF THE PETITION C.M.P NO 3/2018 DATED 28.3.2019 BEFORE THE JUDICIAL FIRST CLASS MAGIASTRATE-11, KOTTAYAM
EXHIBIT P6	TRUE COPY OF THE ORDER IN C.M.P NO 3/2018 DATED 8.7.2019 BY JUDICIAL FIRST CLASS MAGISTRATE-11 (MOBILE), KOTTAYAM