

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 255 of 2009 ()

C.M.P. No.1315/2008 in CC.1104/2003
CC 1104/2003 of JUDL.M.F.C.-I,ERNAKULAM

REVISION PETITIONE/PETITIONER/COMPLAINT:

M/S. VAJRA CHITS & FINANCE (REG. NO.LD/K/
84/EH), CHENGANNUR, REP. BY PROPRIETOR
MR. SANTHOSHKUMAR, SANTHOSH BHAVAN, KODANCHIRA
PULIYUR P.O., CHENGANNUR, ALAPPUZHA DISTRICT
689 510, REP. BY POWER OF ATTORNEY HOLDER MANOJ KUMAR N
S/O.NARAYANAN PILLAI, AGED 35 YEARS
VENU BHAVAN, PUNTHALA PO, KULANADA.

BY ADV. SRI.SAIBY JOSE KIDANGOOR

RESPONDENTS/ACCUSED AND STATE:

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1. STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA
 2. SANTHOSHKUMAR T.S,
MULLUMKALAYIL, AJAYA BHAVAN, MULAKUZHA P.O.
CHENGANNUR, ALAPPUZHA.

R1 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH
R2 BY ADV. SRI.S.PRASANTH
R2 BY ADV. SRI.R.GIREESH VARMA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
27-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.255 of 2009

Dated this the 27th day of November 2015

O R D E R

The revision petitioner is the complainant in C.C. No.1104 of 2003 on the files of the Court of the Judicial Magistrate of First Class -1, Ernakulam.

2. Heard.

3. The revision petitioner filed a complaint under Section 138 of the Negotiable Instruments Act before the court below, along with C.M.P.No.1315 of 2008 to condone the delay of 23 days in filing the complaint. Originally, the case was filed before the Chief Judicial Magistrate Court, Ernakulam. Thereafter, the case was transferred to the

court below. Without noticing the pendency of C.M.P. No.1315 of 2008, the Chief Judicial Magistrate had taken cognizance for the offence under Section 138 of the N.I. Act and made over the case to the court below. At that time, C.M.P. No.1315 of 2008 was not numbered. During the course of trial, it was noticed that there was a petition to condone the delay in filing the complaint. Therefore, the said petition could not be considered by the court below before proceeding with the case. Thereafter, the court below numbered the delay condonation petition as C.M.P.No.1315 of 2008 and dismissed the same. Consequent upon the dismissal of the said C.M.P., the complaint also was dismissed.

4. It was contended by the revision petitioner that the

revision petitioner was laid up due to Rheumatism and hence, he was not able to contact his counsel to file the complaint on time. Therefore, there occurred a delay of 23 days in filing the complaint. The revision petitioner also produced a medical certificate to support his contention.

5. Having gone through the averments in the affidavit filed in support of the application, I am satisfied that there was sufficient cause to condone the delay of 23 days in filing the complaint. The Court must always take a pragmatic and liberal view in the matter of condoning the delay. On the facts and circumstances of the case, I am inclined to condone the delay in filing the complaint, to secure the ends of justice and accordingly, I order so.

In the result, this revision petition stands allowed,

- i. setting aside the order of the court below dismissing C.M.P. No.1315 of 2008 in C.C. No.1104 of 2003,
- ii. C.M.P. No.1315 of 2008 stands allowed restoring C.C.No.1104 of 2003,
- iii. C.C. No.1104 of 2003 is remitted to the court below to proceed with, in accordance with law.

The parties shall appear before the court below on
23.12.2015.

Sd/-
B.SUDHEENDRA KUMAR,
JUDGE

dl/30.11.2015

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PA to Judge