

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

Crl.Rev.Pet.No. 788 of 2009 ()

CMP.1314/2008 IN CC 1110/2003 of J.F.C.M.COURT-I,ERNAKULAM

REVISION PETITIONER/PETITIONER/COMPLAINANT:

**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 689 510
REPBY, P/A HOLDER MANOJ KUMAR N. S/O. NARAYANAN PILLAI,
AGED 35 YEARS, VENU BHAVAN,
PUNTHALA P.O, KULANADA.**

BY ADV. SRI.SAIBY JOSE KIDANGOOR

RESPONDENT(S)/RESPONDENTS/ACCUSED & STATE:

**1. STATE OF KERALA, REP.BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA**

**2. GOPALAN M.G.,
MULLUMKALAYIL HOUSE, MULAKUZHA P.O, CHENGANNOOR
ALAPPUZHA 689 505.**

**R1 BY PUBLIC PROSECUTOR SMT. MADHU BEN M.
R2 BY ADV. SRI.S.PRASANTH**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 11-03-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

OKB

K.HARILAL, J.

Cr1.R.P. No.788 of 2009

Dated this the 11th day of March, 2015.

O R D E R

- 1.This revision petition is preferred against the order dated 28.3.2008 in C.M.P. No.1314/2008 in C.C.No.1110/2003 on the files of the Judicial First Class Magistrate's Court-I, Ernakulam. The above case was filed by the revision petitioner against the accused (2nd respondent herein) alleging offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, the N.I. Act').
- 2.The revision petitioner caused to issue lawyer's notice on 16.7.2003 to the accused, when the cheque issued by the accused got dishonoured and returned for want of sufficient funds. According to the revision petitioner, he was bed ridden from 13.8.2003 onwards and undergoing treatment. So he could not contact his counsel to sign vakalath and other necessary papers for the institution of the complaint in time. He met his counsel at Ernakulam on 16.9.2003 and thereafter necessary papers were prepared for filing the complaint before the court. Thus, there is a delay of 20 days in filing the complaint. There is no wilful laches or negligence on the part of the revision

petitioner in causing the delay. Hence, he filed the above C.M.P. to accept the complaint on the files after condoning the delay of 20 days in instituting the same.

3. The 2nd respondent filed objection challenging the bona fides of the averments in the petition. To prove the bona fides of the reason for delay the petitioner produced a medical certificate issued by the Doctor who treated him. After considering the evidence on record, the learned Magistrate dismissed the said petition. The legality and propriety of the findings whereby the court below dismissed the petition are under challenge in this revision petition.

4. Admittedly, the delay is only 20 days. According to the proviso to sub-section (6) of Section 142 of the N.I. Act, the cognizance of a complaint can be taken by the court after the prescribed period, if the petitioner satisfies the court that he had sufficient cause for not making the complaint within the said period. Going by the impugned order, it is seen that in support of the contentions raised in the above petition, the petitioner has produced a medical certificate issued by the Doctor who treated him. The Doctor has certified that the petitioner was suffering from Rheumatism and the Doctor advised him to abstain from

duty for a period of 30 days with effect from 13.8.2003, for recouping his health. But the court below has not relied on the above medical certificate on the reason that the Doctor, who had issued the medical certificate, was not examined.

5. Having regard to the number of days of delay and consequential sufferings and loss that may be caused to the complainant by the dismissal of the complaint on that ground, I am of the opinion that the denial of an opportunity to prosecute the accused on the above said reason is not justifiable. When substantial justice and technical considerations are pitted against each other, the substantial justice deserves to be preferred rather than technicality. Adjudication of a lis on merits is always desirable than dismissal on technicality. In the above view of the matter, the revision petitioner can be given another opportunity to prosecute the 2nd respondent/accused, on terms.

6. Consequently, the impugned order under challenge will stand set aside on condition that the revision petitioner shall deposit a cost of Rs.5,000/- (Rupees five thousand only) before the trial court within a period of one month from the date of receipt of a copy of this order and if remitted, the same shall be given to the

2nd respondent as cost. If the revision petitioner complies with the said condition within the time, the court below shall restore the complaint on the files and proceed in accordance with law, failing which the impugned order will stand in force as such.

This revision petition is disposed of accordingly.

Sd/–
(K.HARILAL, JUDGE)

okb.