

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 873 of 2012 ()

AGAINST THE JUDGMENT IN CRA 115/2011 of ADDL.SESIONS COURT (ADHOC)-II,
THODUPUZHA DATED 31.01.2012

AGAINST THE JUDGMENT IN ST 57/2010 of JUDICIAL MAGISTRATE OF FIRST CLASS-II,
THODUPUZHA DATED 09.03.2011

REVISION PETITIONER/APPELLANT/ACCUSED:

DINESH AGED 39 YEARS
S/O.RAGHAVAN, SURYANKUNNEL HOUSE, KANJIRAMATTOM KARA
THODUPUZHA VILLAGE, THODUPUZHA TALUK.

BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN

RESPONDENTS/RESPONDENTS/COMPLAINANT/STATE:

-
1. STATE OF KERALA
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.682 031.
 2. BIJOY K.JACOB, AGED 32 YEARS
KURISHINKAL HOUSE, LABBAKANDOM KARA, KUMILY VILLAGE
PEERMADE TALUK-685 531.

R2 BY ADV.SRI.A.C.DEVASIA
R1 BY PUBLIC PROSECUTOR SRI.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
04-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

AV

B. SUDHEENDRA KUMAR, J.

Crl.R.P.No.873 of 2012

Dated this the 4th day of December, 2015.

O R D E R

The accused in S.T.No.57 of 2010 on the files of the Court of the Judicial Magistrate of First Class-II, Thodupuzha has filed this revision petition challenging the concurrent finding of conviction and sentence passed by the courts below under Section 138 of the Negotiable Instruments Act ('N.I.Act' for short).

2. The prosecution allegation is that the revision petitioner executed Ext.P3 cheque in favour of the complainant towards the discharge of the liability of the revision petitioner to the complainant. The said cheque was dishonoured due to insufficiency of funds in the account of the revision petitioner, when it was presented for encashment. Statutory notice was received by the revision petitioner.

3. Before the trial court, PW1 was examined and Exts.P1 to P9 were marked for the complainant. No evidence was adduced from the side of the revision petitioner.

4. When this matter has been taken up for hearing, the learned counsel for the revision petitioner has submitted that the revision petitioner was not granted sufficient opportunity to submit his contentions before passing the judgment by the trial court and for the said reason, the judgment of the trial court cannot be

sustained. It has been further submitted by the learned counsel for the revision petitioner that the trial court had taken the case for judgment without hearing the learned counsel for the revision petitioner and in the said circumstances also, the judgment of the trial court cannot be sustained. It has been further submitted by the learned counsel for the revision petitioner that even though the above aspects were brought to the notice of the appellate court, the appellate court also did not consider the said aspects in its correct perspective and consequently, the judgment of the appellate court cannot be also sustained.

5. It appears from the proceedings of the trial court that the complainant was examined as PW1 on 05.02.2011. On the very same day, the evidence of the complainant was closed and the case was posted for defence evidence after dispensing with the examination of the accused under Section 313 Cr.PC. The evidence of PW1 would show that PW1 was not cross-examined by the defence. The case was posted to 26.02.2011 from 05.02.2011. On that day, there was no sitting and hence the case was notified to 03.03.2011. On 03.03.2011, the revision petitioner had no representation before the trial court. In the said circumstances, the trial court recorded that there was no defence evidence. The trial court on that day, took up the matter as heard and posted the case to 07.03.2011 for judgment. On 07.03.2011, since the judgment

was not ready, the case was adjourned to 09.03.2011. On 09.03.2011, the judgment was pronounced. Thus it is clear from the proceedings of the trial court that the matter was taken up for judgment without hearing the learned counsel for the revision petitioner. The revision petitioner was granted exemption by the trial court from appearance before the trial court. When the trial court noticed that the learned counsel was not present, the trial court should have directed the revision petitioner to appear before the trial court in person. The trial court should have also appointed a counsel for the revision petitioner, if the revision petitioner was not in a position to appoint any counsel at his cost. Instead of doing that, the trial court had taken up the case for judgment in the absence of the revision petitioner and his counsel. It is settled law that no criminal case can be disposed of without hearing the accused or his counsel. Since the trial court had passed the judgment without hearing the accused or his learned counsel, the judgment of conviction and sentence passed by the trial court cannot be sustained. The appellate court also did not consider these aspects in its correct perspective and consequently, the judgment of the appellate court cannot be also sustained.

In the result, this revision petition stands allowed setting aside the conviction and sentence passed by the courts below and the matter is remitted to the trial court for fresh disposal of the

complaint in accordance with law, affording reasonable opportunity to the revision petitioner to cross-examine PW1 and adduce evidence to substantiate his contentions.

Both parties shall appear before the trial court on 07.01.2016 without further notice. This being a matter of 2010, the trial court is directed to dispose of the case as expeditiously as possible and at any rate within a period of six months from the date fixed for the appearance of the parties before the trial court.

Sd/-
B. SUDHEENDRA KUMAR,
JUDGE

AV

/True Copy/

P.A to Judge