

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 1841 of 2009 ()

Crl.A 454/2005 of ADDL. DISTRICT & SESSIONS COURT (ADHOC), KOLLAM
CC 511/2001 of C.J.M.,KOLLAM

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

SANTHAMMA @ SANTHAKUMARI,
W/O.CHANDRAN PILLAI, VASANTH VIHAR, LAKSHMINADA
KOLLAM.

BY ADV. SRI.S.SANTHOSH KUMAR

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

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1. S.GANESH, S/O.SANTHAPPAN PILLAI,
MOOLAYIL VEEDU, JONAKAPURAM, BEACH NORTH
KOLLAM.
 2. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH
R1 BY ADV. SRI.P.N.RAMAKRISHNAN NAIR
R1 BY ADV. SRI.P.VISWANATHAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
01-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1841 of 2009

Dated this the 1st day of December 2015

O R D E R

The accused in C.C.No.511 of 2001 on the files of the Court of the Chief Judicial Magistrate, Kollam 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 (for short 'the N.I. Act').

2. Heard.

3. When this matter has been taken up for hearing, the learned counsel for the revision petitioner has submitted that eventhough the revision petitioner filed C.M.P.

No.1232 of 2008 before the appellate court under Section 391 of the Code praying for admitting two documents as additional evidence, the appellate court dismissed the said petition and thereby deprived the revision petitioner of an opportunity to adduce evidence. It appears from the order passed by the appellate court in C.M.P. No.1232 of 2008 that the said C.M.P. was dismissed by the appellate court on the reason that the revision petitioner had sufficient opportunity to adduce evidence before passing the judgment by the trial court on 30.6.2005. However, the documents sought to be introduced as additional evidence were the judgments in two cases which were delivered by the courts concerned, only after the judgment of conviction and sentence passed by the trial court in this case. For the

said reason, the ground stated by the appellate court to dismiss C.M.P. No.1232 of 2008 cannot be sustained. In the said circumstances, it is only just and proper to remit the matter to the appellate court to consider C.M.P. No.1232 of 2008 afresh in accordance with law. The appellate court shall also consider as to whether any of the provisions of Sections 41 to 43 of the Indian Evidence Act dealing with the previous judgments in subsequent cases, would be applicable to the case in hand or not. For the said reasons, the judgment of conviction and sentence passed by the appellate court cannot be sustained.

In the result, this revision petition stands allowed, setting aside the conviction and sentence passed by the appellate court and the matter is remitted to the appellate

court for fresh consideration of the appeal in accordance with law, in the light of the observations made above, affording reasonable opportunity to both sides to substantiate their contentions.

The revision petitioner shall appear before the appellate court on 22.12.2015.

sd/-

**B.SUDHEENDRA KUMAR,
JUDGE**

dl/4.12.2015

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PA to Judge