

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1772 of 2012 ()

ST 67/2011 of C.J.M.,PATHANAMTHITTA

REVISION PETITIONER/COMPLAINANT:

SOMARAJAN,
KOCHEMPARAMBIL HOUSE, MUTTOM NORTH, THATTARAMBALAM.P.O
MAVELIKKARA.

BY ADV. SRI.S.MUHAMMED HANEEFF

RESPONDENTS/STATE AND ACCUSED:

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.
 2. MANOJ,
KOLLETHU HOUSE, OONNUKAL.P.O, CHENEERKKARA
PATHANAMTHITTA-689647.

R1 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
29-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1772 of 2012

Dated this the 29th day of October 2015

O R D E R

The revision petitioner is the complainant in S.T. No.67 of 2011 on the files of the Court of the Chief Judicial Magistrate, Pathanamthitta, who in this revision petition challenges the order passed by the court below dismissing the complaint under Section 204(4) of the Code.

2. Service is complete. However, there is no appearance for the second respondent.

3. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

4. The revision petitioner filed a complaint against the

accused, who is the second respondent herein, under Section 138 of the Negotiable Instruments Act. After complying with the legal formalities, the court below issued summons to the accused. The order impugned would show that the summons was refused by the accused and in the said circumstances, the court below directed the revision petitioner to take steps to issue warrant. The revision petitioner had taken steps to issue warrant. Thereafter, the complainant was directed to take steps to issue summons to the accused through registered post with acknowledgment due. However, the complainant did not produce the cover as directed by the court below. In the said circumstances, the court below dismissed the complaint on 28.4.2012.

5. In this case, it appears from the order impugned itself that the summons issued from the court below, was refused by the accused. Therefore, the court issued warrant against the accused. Once the summons issued is refused to be accepted by the accused, the warrant will be issued under Section 87(b) of the Code, for which no process fee is required to be paid by the complainant. This Court in **Ayodya Printers v. State of Kerala** [2015(4) KHC 897], held that once the summons was tendered, the complainant should not be directed to pay the process fee for issuing steps against the accused again. In view of the decision in **Ayodya Printers** (supra), the order passed by the court below dismissing the complaint under Section 204(4) of the Code, cannot be said to be legal and correct and consequently, the same cannot be sustained.

In the result, this revision petition stands allowed setting aside the order impugned and the matter is remitted to the court below for fresh consideration of the complaint in accordance with law. The proceedings of the court below shall stand relegated to the stage prior to the dismissal of the complaint on 28.4.2012. The parties shall appear before the court below on 20.11.2015 without further notice.

Sd/-
B.SUDHEENDRA KUMAR,
JUDGE

dl/31.10.2015

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PA to Judge