

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

Cr1.Rev.Pet.No. 2484 of 2009 ()

JUDGMENT IN Cr1.A 79/2008 OF THE ADDITIONAL SESSIONS COURT-I,
MAVELIKKARA

JUDGMENT IN CC 16/2003 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT-II, HARIPAD

REVISION PETITIONER/APPELLANT/ACCUSED:

K.P.REGHUVARAN, AGED 44 YEARS,
S/O. PURUSHAN, SANTHI BHAVAN, NANNATTUKAVU
POTHENKODE, TRIVANDRUM.

BY ADVS.SRI.P.SREEKUMAR
SRI.K.S.MANU (PUNUKKONNOOR)

RESPONDENTS/COMPLAINANT & STATE:

1. SUNITHA M.P., ALIAS SUNITHA SASIDHARAN,
W/O. SASIDHARAN, PUTHENTHARAYIL HOUSE, KARUVATTA NORTH
HARIPPAD.
2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

R, BY PUBLIC PROSECUTOR SRI.R.GITHESH
R,R1 BY ADV. SRI.R.SUNIL KUMAR
R,R1 BY ADV. SMT.A.SALINI LAL

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 06-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.2484 of 2009

Dated this the 6th day of November, 2015

ORDER

The revision petitioner is the accused in C.C.No.16 of 2003 on the files of the Court of the Judicial Magistrate of First Class-II, Haripad.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced him thereunder to simple imprisonment for three months and to pay a compensation of ₹1,00,000/- to the complainant under Section 357(3) Cr.P.C. The appeal filed against the said conviction and sentence was dismissed. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard both sides.

4. The prosecution allegation is that the revision petitioner borrowed an amount of ₹1,00,000/- from the complainant and towards the discharge of the said liability, the

revision petitioner issued Ext.P1 cheque in favour of the complainant. The complainant presented the said cheque for encashment. However, the same was dishonoured due to the insufficiency of funds in the account of the revision petitioner. Statutory notice was issued to the revision petitioner on behalf of the complainant, which was returned as unserved as the revision petitioner refused to accept the same even after the receipt of intimation from the postal authorities. However, the revision petitioner did not pay the cheque amount within the statutory period or thereafter.

5. Before the trial court, PW1 was examined and Exts.P1 to P6 were marked for the complainant. DW1 and DW2 were examined and Exts.D1 to D5 were marked for the revision petitioner.

6. The learned counsel for the revision petitioner has submitted that the appellate court disposed of the appeal without hearing the appellant or his counsel and in the said circumstances, serious prejudice was caused to the revision

petitioner. It has been argued by the learned counsel for the revision petitioner that the appellate court did not take into consideration various grounds urged by the revision petitioner in the memorandum of appeal and consequently, prejudice has been caused to the revision petitioner.

7. The Apex Court in **L. Laxmikanta v. State [(2015) 4 SCC 222]** held that the Court should not dispose of the appeal without hearing the appellant or his counsel and if the appellant or his counsel is not present, the court has to appoint an *amicus curiae* before disposing of the appeal on merits.

8. In this case, the cheque involved is for ₹1,00,000/-. The revision petitioner had taken various contentions before the trial Court. However, the said contentions were not considered by the appellate court. In the said circumstances, I am of the view that it is only just and proper to remit the matter to the appellate Court to enable the appellate court to pass judgment afresh after hearing the appellant or the *amicus*

curiae. For the said reason, the conviction and sentence passed by the appellate court cannot be sustained and consequently, I set aside the same.

In the result, the 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 disposing of the appeal afresh in accordance with law, after hearing the counsel for the appellant or the *amicus curiae*, as the case may be, as expeditiously as possible, and at any rate, within four months from the date fixed for the appearance of the parties before the appellate court.

The parties shall appear before the appellate court through the counsel on **2-12-2015**.

Sd/-

**B. SUDHEENDRA KUMAR
JUDGE**

Scl.

True Copy

PA to Judge