

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. 3078 of 2009 ()

ORDER IN CMP 1685/2009 & CMP 1686/2009 OF THE JUDICIAL FIRST CLASS
MAGISTRATE COURT, PAYYANNUR DATED 29-06-2009

REVISION PETITIONER(S)/COMPLAINANT.:

V.ASSAN, S/O. AHAMMAD, AGED 45 YEARS,
VELLAKKAD, VELLORA AMSOM, KARIPPAL DESOM
KARIPPAL P.O., KANNUR DISTRICT. (REP. BY HIS
POWER OF ATTORNEY HOLDER MUNDAYATTU ABDULLA
S/O. MOOSA, AGED 45 YEARS, KANDACHIPEEDIKA HOUSE, VELLAKAD,
VELLORA AMSOM, KARIPPAL P.O, KANNUR DISTRICT.

BY ADVS.SRI.O.V.MANIPRASAD
SRI.LIJO KURIAN JOSE

RESPONDENTS/ACCUSED & STATE.:

1. KANIYAT RAHIM, S/O. IBRAHIM,
AGED 35 YEARS, NADIA MANZIL, CHELORA
KAPPAD P.O., KANNUR DISTRICT.
2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R,R1 BY ADV. SRI.V.A.SATHEESH
R,R1 BY ADV. SRI.V.T.MADHAVANUNNI
BY PUBLIC PROSECUTOR SRI.R.GITESH

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.3078 of 2009

Dated this the 6th day of November, 2015

ORDER

The revision petitioner is the petitioner in C.M.P.No.1686 of 2009 on the files of the Court of the Judicial Magistrate of First Class, Payyannur.

2. The above C.M.P was filed for condoning the delay of 21 days in filing C.M.P.No.1685 of 2009, which was a complaint filed under Section 138 of the Negotiable Instruments Act. The court below dismissed C.M.P.No.1686 of 2009. Consequent upon the dismissal of the said C.M.P., the court below also dismissed C.M.P.No.1685 of 2009.

3. Heard both sides.

4. The contention of the revision petitioner was that after the dishonour of the cheque, the accused agreed to pay the amount covered by the cheque. Therefore, the revision petitioner was waiting for that. Therefore, there occurred a delay of 21 days in filing the complaint. The court below

observed that the statutory notice was returned with the endorsement "Addressee Left India". The summons issued by the court below was also returned with the endorsement that the accused left India. For the said reason, the court below observed that there was hardly any chance for the accused to promise to pay the amount, as the accused was abroad at that time. The said finding of the court below cannot be said to be correct because the presence of the accused in India is not necessary to make any such promise. Even otherwise, the court must take a very liberal and pragmatic view in the matter of delay.

5. Considering the facts and circumstances of the case, including the contentions of the revision petitioner, I am of the view that the delay of 21 days in filing the complaint can be condoned to secure the ends of justice. Since C.M.P.No.1685 of 2009 was dismissed consequent upon the dismissal of C.M.P.No.1686 of 2009, the order of dismissal of C.M.P.No.1685 of 2009 is also to be set aside and accordingly,

I order so.

In the result, this revision petition stands allowed,

(i) setting aside the orders passed by the court below dismissing C.M.P.No.1686 of 2009 and C.M.P.No.1685 of 2009.

(ii) C.M.P.No.1686 of 2009 stands allowed condoning the delay in filing C.M.P.No.1685 of 2009.

(iii) C.M.P.No.1685 of 2009 stands remitted to the court below.

(iv) The court below is directed to proceed with C.M.P No.1685 of 2009 in accordance with law.

The revision petitioner shall appear before the court below on 2.12.2015 without further notice.

Sd/-

**B. SUDHEENDRA KUMAR
JUDGE**

Scl.

True Copy

PA to Judge