

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

Crl.Rev.Pet.No. 3100 of 2009 ()

AGAINST THE ORDER IN ST 841/2008 of CHIEF JUDICIAL
MAGISTRATE, KOLLAM DATED 26-06-2009

REVISION PETITIONER(S)/COMPLAINANT:

SATYANANADAN, SUARNALAYAM,
ASRAMOM, KOLLAM REP. BY POWER OF ATTORNEY HOLDER
SHAJAN, S/O. SREENIVASAN, AGED 33 YEARS
RESIDING AT SRINIVAS, PERUMPUZHA, POST
KERALAPURAM, KOLLAM.

BY ADV.SRI.M.T.SURESHKUMAR

RESPONDENT(S)/ACCUSED AND STATE:

1. SHAJAHAN, BISMI MANZIL, PANGOPPARA
PULLANIVILA, THUNDATHIL POST, THIRUVANANTHAPURAM.

2. STATE OF KERALA, REP. BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

PUBLIC PROSECUTOR SRI. GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 12-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
Crl.R.P. No. 3100 of 2009
.....

Dated this the 12th day of October, 2015

ORDER

The revision petitioner is the complainant in S.T. No. 841 of 2008 on the files of the court of the Chief Judicial Magistrate, Kollam.

2. The revision petitioner filed a complaint against the first respondent herein alleging offence under Section 138 of the N.I.Act. The accused entered appearance before the court through counsel. However, the accused did not appear in person. In the said circumstances, warrant was ordered by the court below on 24-4-2009 and the case was posted to 26-6-2009. On that day, the court below dismissed the complaint as no step had been taken to issue warrant against the accused.

3. Service is complete, However, there is no appearance for the first respondent.

4. Heard the learned counsel for the petitioner and the learned Public Prosecutor .

5. It is borne out from the proceedings of the court below that the accused appeared before the court below through counsel

after the service of summons on the accused. Therefore, in view of the decision of this Court in *Ayodya Printers Ltd. v. State of Kerala and Another* [2015 (4) KHC 897], the order passed by the court below dismissing the complaint under Section 204 (4) Cr.P.C. is illegal and incorrect. Since the accused had appeared before the court below through lawyer prior to the ordering of the warrant, the court below was not justified in dismissing the complaint under Sec. 204 (4) Cr.P.C, and consequently, the order impugned cannot be sustained.

6. In the result, this revision petition stands allowed, setting aside the order impugned and the matter is remitted to the court below for proceeding with 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 26-6-2009. The revision petitioner shall appear before the court below on 2-11-2015 without any further notice.

**B. SUDHEENDRA KUMAR,
JUDGE.**

Ari/