

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

Crl.Rev.Pet.No. 585 of 2013 ()

-----  
Crl.,A 414/2006 of ADDL. DISTRICT & SESSIONS COURT (ADHOC), KOLLAM  
CC 616/2000 of J.M.F.C.-III, PUNALUR

REVISION PETITIONER(S)/REVISION PETITIONERS/APPELLANTS IN  
CRL.APPEAL/ACCUSED IN C.C.:--  
-----

1. BHOOMIDHARAN  
HOUSE NO.3/100, PEKOVIL THERUVU, AMBASAMUDRAM TALUK  
THIRUNELVELI DISTRICT, TAMIL NADU.
2. MYTHEN FATHIMA @ PADMA,  
W/O.BHOOMINATHAN, HOUSE NO.3/100, PEKOVIL THERUVU  
AMBASAMUDRAM TALUK, THIRUNELVELI DISTRICT, TAMIL NADU.

BY ADV. SRI.N.SASANKAN PILLAI

RESPONDENT/STATE/RESPONDENT IN CRL.APPEAL/COMPLAINANT IN C.C.:--  
-----

1. STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, ERNAKULAM.

ADDL.2 MADHUKUMAR, MOHANA VILASOM  
NADUKKUNNU MURI  
PATHANAPURAM VILLAGE

IS IMPEADED AS ADDL.2ND RESPONDENT AS PER ORDER IN CRLM.A.  
NO.6307/2015 DATED 20.11.2015

R1 BY BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH  
ADDL R2 BY ADV. SRI.ABDUL JALEEL.A  
ADDL R2 BY ADV. SMT.M.A.SULFIA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON  
20-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**B.SUDHEENDRA KUMAR, J.**

-----  
Crl.R.P. No.585 of 2015  
-----

Dated this the 20<sup>th</sup> day of November 2015

O R D E R

The accused persons in C.C. No.616 of 2000 on the files of the Court of the Judicial Magistrate of First Class - III, Punalur, have filed this revision petition challenging the concurrent finding of conviction and sentence passed by the courts below under Section 411 read with Section 34 I.P.C.

2. Heard both sides.

3. When this matter has been taken up for hearing, the learned counsel for the revision petitioners has argued that the appellate court had disposed of the appeal without

hearing the appellants or their counsel and hence, serious prejudice was caused to them. It has been further argued by the learned counsel for the revision petitioners that the appellate court did not take into consideration various grounds urged by the revision petitioners in the memorandum of appeal and consequently, prejudice had been caused to the revision petitioners.

4. A three Judge bench of the Apex Court in **Sridhar Namdeo Lawand v. State of Maharashtra** (2013 KHC 4659) held in paragraph 6 thus:-

“It is settled law that Court should not decide criminal cases in the absence of the counsel for the accused as an accused in a criminal case should not suffer for the fault of his counsel and the Court should, in such a situation must appoint another

counsel as an *amicus curiae* to defend the accused”.

5. 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 curie* before disposing of the appeal on merits.

6. The revision petitioner had taken various contentions in the memorandum of appeal. 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 in Crl.Appeal No.414 of 2006 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 15.12.2015.

**Sd/-**

**B.SUDHEENDRA KUMAR,  
JUDGE**

*dl/21.11.2015*

*// True Copy //*

*PA to Judge*