

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

Crl.Rev.Pet.No. 438 of 2015 ()

AGAINST THE ORDER IN CC 2482/2013 of J.M.F.C., CHALAKUDY
DATED 28-03-2014

REVISION PETITIONER(S)/COMPLAINANT:

E.K.KALAM
S/O.KOCHUNNI, EDATHATHARA HOUSE, VADAMAKARA
MALA P.O., THRISSUR DISTRICT.

BY ADV. SRI.GEORGE SEBASTIAN

RESPONDENT(S)/ACCUSED AND STATE:

1.VIJAYAN K.A.
S/O.KAIMAL, VIJAYA MANDIRAM, KUMBALAM P.O.
PIN: 682 506, ERNAKULAM DISTRICT
WORKING AS SENIOR CIVIL POLICE OFFICER (PC 7624)
CRIME BRANCH, CIDOCW-II, JAWAHARLAL NEHRU STADIUM
KALOOR, KOCHI.

2.STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA.

R1 BY ADV. SRI.P.A.MARTIN ROY
R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
07-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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CRL.R.P. No.438 OF 2015

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Dated this the 7th day of April, 2015

ORDER

This revision petition is filed against order dated 28.3.2014 in C.C.No.2482 of 2013 passed by the Court of Judicial First Class Magistrate, Chalakkudy. The petitioner filed CMP.No.2464 of 2013 alleging commission of offence under section 138 NI Act against the first respondent. Essentially, it is contended therein that a cheque bearing No.216880 dated 26.11.2012 issued by the first respondent for an amount of ₹5,50,000/- drawn on State Bank of India, M.G.Road Ernakulam in favour of the revision petitioner for discharging a legally enforceable debt was dishonoured on account of paucity of funds in the account maintained by the first respondent. It is also stated therein that pursuant to the dishonour of the cheque statutory procedures were followed and a statutory notice intimating the first respondent of the dishonour of the cheque and calling upon

him to effect payment of the amount due was issued and despite its receipt, the payment was not made by the first respondent. Obviously, on the complaint cognizance was taken and it was taken on file as C.C.No.2482 of 2013. Thereafter, the said C.C was posted to 16.8.2013, 8.11.2013, 13.12.2013 and 28.3.2014. It is obvious from the impugned order itself that cognizance was taken on the aforesaid complaint on 3.5.2013 and summons was ordered for appearance of the accused. However, the revision petitioner had failed to take steps to enable the court to issue summons. It is in the said circumstances that after posting the said matter on the aforesaid dates, on 28.3.2014, it was dismissed in the light of section 204(4) Cr.P.C. This revision petition is filed against the said order.

2. I have heard the learned counsel for the petitioner, the learned counsel for the first respondent and also the learned Public Prosecutor. The impugned order itself would reveal that it is the failure on the part of the petitioner to take steps to issue summons, as

ordered vide order dated 3.5.2013 that ended in the dismissal of the complaint under section 204 (4) Cr.P.C. A perusal of the provisions under section 204 Cr.P.C would reveal that when an order to issue summons was issued and the concerned complainant failed to take appropriate steps to pay the process fees, the complaint could be dismissed in the light of the provisions under section 204(4) Cr.P.C. True that the learned Magistrate has taken cognizance on the complaint on 3.5.2013 and summons to the accused was ordered and that case was posted to different dates. Evidently, the first respondent was not served with summons and consequently, he had not entered appearance before the trial court. This revision petition was sought to be registered with a delay of 208 days and the petition to condone the delay was allowed on terms. Though the petitioner had failed to pay the process fees and to take steps to issue summons to the accused, considering the amount of the cheque in question and the reasons for the failure to take steps to issue summons to the first respondent, I am of the view that one last opportunity can be granted to the petitioner,

to pursue with the matter in accordance with law and on merits subject to his compliance with the order to issue summons. It will be open to the learned Magistrate to fix the date for appearance of the accused and also to fix the date for taking steps for the same. In such circumstances, the impugned order is set aside. C.C.No.2482 of 2013 is restored into the files of the Court of Judicial First Class Magistrate, Chalakudy for fresh consideration, in accordance with law in case the petitioner takes up appropriate steps to issue summons to the first respondent within the time, now to be fixed by the learned Magistrate.

This revision petition is allowed as above.

Sd/-
C.T. RAVIKUMAR
(JUDGE)

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

