

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

Crl.Rev.Pet.No. 677 of 2015

AGAINST THE JUDGMENT IN CRL.A.NO. 185/2013 of SESSIONS
COURT, PALAKKAD DATED 18-10-2013.

AGAINST THE JUDGMENT IN ST 6074/2012 of J.M.F.C., ALATHUR
DATED 21-03-2013.

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

BHAVADAS, AGED 41 YEARS, S/O. PAZHINIYANDI,
KARINKULANGARA VEEDU, VAVULLYAPURAM P.O, ALATHUR,
PALAKKAD.

BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL)

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 05-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.677 of 2015

Dated this the 5th day of June, 2015

ORDER

The revision petitioner is the accused in S.T.No.6074 of 2012 on the files of the Judicial First Class Magistrate's Court, Alathur. He was prosecuted for the offence punishable under Sec.15(C) of the Abkari Act. After trial, he was found guilty of the said offence and convicted thereunder. He was sentenced to undergo simple imprisonment for a period of three months and also directed to pay a fine of ₹5,000/-. In default of payment of fine, he shall undergo a further period of three months. Aggrieved by the conviction and sentence, he had preferred Crl. Appeal No.185 of 2013 before the Court of Session, Palakkad Division

with a petition to condone the delay. The petition to condone the delay was allowed on cost of ₹1,000/-; but the cost was not paid, as directed by the court below. Therefore, Crl.M.P.No.1784 of 2013 filed for condoning the delay was dismissed. Consequent on the dismissal of the said petition, Crl. Appeal was also dismissed. The legality and correctness of this judgment is under challenge in this revision petition.

2. The learned counsel for the revision petitioner submits that the court below went wrong by dismissing the appeal on non-payment of cost without considering the merits. It is also submitted that the non-remittance of the cost was neither wilful; nor caused by negligence.

3. Going by the impugned judgment, it is seen that the appeal was dismissed consequent on the dismissal of Crl.M.P. No.1784 of 2013 filed to condone the delay in filing the appeal. Though the said petition was allowed on cost of ₹1,000/-, the said cost was not

paid within time. I do not find fault with the court below in dismissing the appeal on non-payment of cost, as directed by the court below.

4. When substantial justice and technical considerations are pitted against each other, substantial justice deserves to be preferred rather than disposal on technical considerations. In this view of the matter, I am taking a lenient view and the petitioner is given another opportunity to contest the appeal on terms.

5. The impugned order and judgment under challenge will stand set aside on payment of cost of ₹5,000/- (Rupees five thousand only) to the Appellate Court within a period of one month from today. Needless to say, Crl.M.P.No.1784 of 2013 also will stand allowed on payment of cost. The court below is further directed to restore the appeal on the files and proceed in accordance with law, on payment of cost. In the event of failure, the impugned order and

judgment will stand in force.

This revision petition is allowed accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge