

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

Crl.Rev.Pet.No. 4029 of 2007 ()

AGAINST THE ORDER IN ST C.M.P.91/2007 IN 930/2005 of J..F.M.C. - II, IDUKKI

REVISION PETITIONER(S)/PETITIONER/ACCUSED::

**LILLY, AGED 45,
W/O. MATHEW,
PERUMPUZHACKAL,
CHELACHUVADU P.O.,
KATHIPPARA.**

**BY ADVS.SRI.RENJITH B. MARAR
SRI.L.RAJESH NARAYAN IYER
SMT.LAKSHMI.N.KAIMAL**

RESPONDENT(S)/STATE & COMPLAINANT::

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. K.J. SAJAN, S/O. JOSEPH,
KALAMBEL HOUSE,
MANIPPARA P.O., KARIMBAN.**

**R1 BY PUBLIC PROSECUTOR SRI.N. SURESH
R2 BY ADV. SRI.GEORGEKUTTY MATHEW**

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

STK

P.D. RAJAN, J.

Crl.R.P.4029 of 2007

Dated this the 8th day of September, 2015

ORDER

Revision petitioner is the accused in S.T.930/05 on the file of Judicial First Class Magistrate-II, Idukki for offence punishable under Section 138 of the Negotiable Instruments Act. During trial, he filed C.M.P.91/07 in the trial court for conducting voice test recorded in a mobile phone which was allowed by the trial court. On 24.10.07, the learned Magistrate observed, "No expert batta deposited in spite of repeated adjournments. Defendant and counsel called absent. Hence this petition is dismissed for want of further steps." Aggrieved by that order, she approached this court with this revision.

2. The learned counsel appearing for the revision petitioner contended that, the above application was dismissed on the ground of technical mistakes since the actual cost was not mentioned by the trial court and could not remit the batta.

3. The learned Public Prosecutor submitted that, the

above submission made by the learned counsel is not correct. The actual proceedings of the court below was not produced in this court for ascertaining the actual amount directed by the trial court. Without obtaining those data, a vague contention was taken by the learned counsel, there was a dilatory tactics from the side of the revision petitioner and no merit in the above contention.

The case was instituted by the second respondent alleging offence punishable under Section 138 of the Negotiable Instruments Act. From the records it is clear that, the de-facto complainant was examined as PW1 and his documents were also marked. The revision petitioner examined DW1 to DW3 and marked Ext.X1 and X2. After that he filed C.M.P.91/07 for sending mobile phone for the voice test by an expert. Annexure A is the copy of the application. The written version of the conversation was recorded in Annexure B. Nothing has been stated by the revision petitioner in Annexure B, from where such conversation was obtained and by whom it was recorded. There is no authenticity for these 32 pages. The call

details were not obtained from the service provider. The telephone number of the revision petitioner and the person who received the call were also not mentioned by the revision petitioner. If it is a telephone call from phone to another phone, the telephone number and service providers of both phones are necessary. There is no authenticity for Annexure B. In the circumstance, I am of the opinion that, there is no merit in the revision petition, hence I dismiss this petition accordingly. The learned Magistrate is directed to expedite the trial and dispose the matter within 3 months from the date of receipt of this order.

STK

Sd/-
P.D. RAJAN,
JUDGE

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P.A. TO JUDGE