

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1162 of 2013 ()

Crl.MP 2883/2012 of SESSIONS COURT,KOLLAM
CC 743/1999 of J.M.F.C., SASTHAMCOTTA

REVISION PETITIONER/APPELLANT IN CRL.APPEAL/ACCUSED IN CC:

AJI @ AJIMON, AGED 36 YEARS
S/O.APPUKUTTAN ACHARY, KAKKARA VADAKKATHIL
KADAPPA MURI, MYNAGAPPALLY VILALGE, KOLLAM DIST.

BY ADVS.SRI.C.PRATHAPACHANDRAN PILLAI
SRI.R.SURAJ KUMAR
SRI.SUNIL J.CHAKKALACKAL

RESPONDENTS/STATE/1ST RESPONDENT IN CRL.APPEAL/COMPLAINANT IN CC:

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

2. P M KRISHNAN NAIR
PADMA VILASAM VEEDU, KADAPPA MURI
MUYNAGAPPALLY VILLGE, KOLLAM - 691 001

R2 BY ADV. SRI.P.B.SAHASRANAMAN
R2 BY ADV. SRI.P.HARIKUMAR
R2 BY ADV. SRI.K.JAGADEESH
R1 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
27-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P.No.1162 of 2013

Dated this the 27th day of October 2015

O R D E R

The revision petitioner is the accused in C.C. No.743 of 1999 on the files of the Court of the Judicial Magistrate of First Class, Sasthamcotta.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 (“the N.I.Act” for short) and sentenced him thereunder to simple imprisonment for one year and to pay Rs.40,000/- as compensation to the complainant under Sec. 357 (3) Cr.P.C. The appeal was filed against the said conviction and sentence with a delay of 2726 days. Crl.M.P.No.2883

of 2012 was filed along with the appeal praying for condonation of the delay in filing the appeal. The appellate court dismissed the said petition. Therefore, no order was passed on the CrI. Appeal. Aggrieved by the said order passed by the appellate court, this revision petition has been filed.

3. Heard both sides.

4. It is contended by the revision petitioner that after the judgment of the trial court, he approached a Criminal lawyer, namely, Adv.Thulasi from Patharam, for filing the appeal and thereafter, the revision petitioner went to Bombay in connection with his job. However, no appeal was filed. The lawyer informed him that the appeal was already filed and it was pending. When he came back from Bombay, it was revealed that no appeal was filed. The

revision petitioner was put to anxiety and depression and he had to undergo Ayurvedic treatment till 28.9.2012. Therefore, there occurred a delay of 2726 days in filing the appeal.

5. The 2nd respondent herein filed objection before the court below opposing the application.

6. The revision petitioner produced medical certificate before the court below stating that he was undergoing treatment for anxiety and depression from 2.5.2012 onwards. The certificate would further show that the revision petitioner was undergoing treatment intermittently from 31.5.2009 onwards for anxiety and depression. Since no oral evidence was adduced by the revision petitioner, the court below dismissed the delay condonation petition.

7. When this matter had been taken up for hearing, in

order to ascertain the *bonafides* of the revision petitioner, this Court directed the revision petitioner to deposit Rs.2,00,000/- before the trial court. The revision petitioner deposited the said amount of Rs.2,00,000/- before the trial court and produced the original receipt for my perusal. Considering the contentions of the revision petitioner, I am of the view that it is only just and proper to grant one more opportunity to the revision petitioner to contest the matter on merits. For the said reason, I am inclined to condone the delay in filing the appeal.

In the result, this revision petition stands allowed,

(i) setting aside the order dated 3.4.2013 in CrI.M.P.

No.2883 of 2012 passed by the appellate court,

(ii) CrI.M.P.No.2883 of 2012 stands allowed

condoning the delay in filing the appeal,

(iii) the appellate court is directed to number the appeal and dispose of the same, in accordance with law, 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, either directly or through the lawyer on 16.11.2015 without further notice.

The amount deposited by the revision petitioner before the trial court as per the direction of this court, shall be disbursed as per the order of the appellate court, after the disposal of the appeal.

Sd//-

**B.SUDHEENDRA KUMAR,
JUDGE**

dl

// True Copy //

PA to Judge