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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

Crl.Rev.Pet.No. 1003 of 2015 ()

AGAINST THE JUDGMENT IN CC 2448/2010 of JUDICIAL FIRST
CLASS MAGISTRATE-V, ERNAKULAM DATED 05-08-2014

REVISION PETITIONER(S)/COMPLAINANT:

AYODYA PRINTERS LTD.
REPRESENTED BY M.R.KRISHNAKUMAR
GENERAL MANAGER AND AUTHORIZED AGENT, PERANDOOR ROAD
ELAMAKKARA P.O., ERNAKULAM, PIN 682026.

BY ADVS.DR.PAULY MATHEW MURICKEN
SRI.O.SAJEEVAN

RESPONDENT(S)/STATE & ACCUSED:

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

2. T.S.RAJAN
CHIEF EDITOR, GENERAL INFORMATION WEEKLY
INFORMATION BUREAU, C.C.43/387
POWER HOUSE EXTENSION ROAD, ERNAKULAM PIN 682018.

R2 BY ADV. SRI.K.A.SALIL NARAYANAN
BY PUBLIC PROSECUTOR SRI.V.S. SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 10-09-2015, THE COURT ON 22-09-2015, PASSED THE
FOLLOWING:

C.R.

B. SUDHEENDRA KUMAR, J.

.....
Crl.R.P. No. 1003 of 2015
.....

Dated this the 22nd day of September, 2015

ORDER

The revision petitioner is the complainant in CC 2448/2010 on the files of the court of the judicial magistrate of first class-V, Ernakulam, who in this revision petition challenges the order passed by the court below dismissing the complaint under section 204 (4) of the Code of Criminal Procedure, 1973 (for short “the Code”).

2. The facts leading to the present revision petition can be briefly stated as follows:-

The revision petitioner filed a complaint before the court of the Judicial Magistrate of First Class-V, Ernakulam against the 2nd respondent alleging offence

under Section 138 of the Negotiable Instruments Act, 1881. After complying with the legal formalities, summons was issued to the 2nd respondent under Section 204 (1) (a) of the Code. In response to the summons issued by the court, the 2nd respondent appeared before the court through his counsel. Copy of the complaint was also given to the 2nd respondent through his counsel and the case stood posted to 7-2-2013 for recording the plea of the 2nd respondent. On that day, the 2nd respondent was not present before the court below. However, there was representation for the 2nd respondent. An application filed to condone the absence of the 2nd respondent was dismissed by the court below. The court below also issued non-bailable warrant against the 2nd respondent. The complainant had taken steps for issuing non-bailable warrant against the 2nd respondent in obedience to the order passed by the court below. However,

the non-bailable warrant could not be executed. In the said circumstances, the court below directed the complainant to take steps under Sections 82 and 83 of the Code against the 2nd respondent. Finally, on 5-8-2014, when the case was called, the court below dismissed the complaint under Section 204 (4) of the Code. The order passed by the court below on 5-8-2014 is extracted hereunder:-

“Complainant is absent and not represented.

No steps are taken against the accused so far

despite of granting sufficient time from 7-5-

2014. Hence, the complaint is dismissed

under Section 204 (4) Cr.P.C.”

3. It is clear from the above order that the complaint was dismissed by the court below under Section 204 (4) of the Code. for not having taken steps against the 2nd respondent.

4. Now the question to be considered is as to whether the dismissal of the complaint by the learned Magistrate under Section 204 (4) of the Code is legal, proper and correct.

5. Chapter XVI of the Code deals with commencement of proceedings before Magistrates. Section 204 of the Code deals with the provisions for issuing process for the attendance of the accused before the court. In this context, it is profitable to understand Section 204 of the Code, which is extracted hereunder:-

“204. Issue of process :- (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be –

a) a summons –case, he shall issue his summons for the attendance of the accused, or

b) a warrant–case, he may issue a warrant, or, if

he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87".

6. It is clear from Clause (a) of Sub Section (1) of Section

204 of the Code that if the Court taking cognizance of the offence is of the opinion that there is sufficient ground for proceeding against the accused, the Court shall issue summons for the attendance of the accused if the case is a summons case. Clause (b) of Sub Section (1) of Section 204 of the Code makes it clear that in a warrant case, the Court may issue warrant or summons, as the court thinks fit, for causing the accused to be brought before the court or for causing the appearance of the accused before the Court. Sub section (4) of Section 204 of the Code provides that no process shall be issued by the court until the process-fees or other fees payable as per any law for the time being in force are paid. Sub section (4) of Section 204 of the Code further provides that if process-fees or other fees payable are not paid within a reasonable time, the Magistrate may dismiss the complaint. Thus, it is clear from the provisions of Sub section (4) of Section 204 of the Code that the complainant is bound to pay

process-fees or other fees, when by any law for the time being in force any process-fees or other fees are payable, as a condition precedent for the court to issue process against the accused for the appearance of the accused before the court or for causing the production of the accused before the Court. The court is having the discretion to dismiss the complaint if process-fees or other fees payable are not paid within a reasonable time. So, there can be no ambiguity with regard to the proposition that the court is vested with the power and discretion to dismiss the complaint under Section 204 (4) of the Code, if the complainant fails to pay the process-fees or other fees payable under any law for the time being in force within a reasonable time.

7. Now the question is whether the complainant should pay any process-fee for issuing warrant or other steps against the accused when the accused does not appear before the court

after the service of summons or when the accused abstains from the Court after the appearance of the accused once before the court pursuant to the process initially issued. To answer this query, it is necessary to understand the provisions of Section 87 (b) of the Code, which is extracted hereunder:-

“87. Issue of warrant in lieu of, or in addition to, summons:- A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest -

- (a)
- (b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure”.

8. It is clear from Section 87 (b) of the Code that if any person fails to appear at such time as directed in the summons

and the summons is proved to have been duly served and no reasonable excuse is offered for such failure, the court may issue a warrant for his arrest, after recording its reasons. There can be no dispute that the word “person” referred to in Section 87 (b) of the Code includes an accused also. Thus, it is implicit from Section 87 (b) that once the accused fails to appear before the court after the service of summons and if the court issues warrant, the said warrant will be issued only under Section 87 (b) and not under Section 204 (1)(b) of the Code. In a warrant case, the Court is vested with the discretion under clause (b) of sub section (1) of Section 204 of the Code to issue warrant, instead of issuing summons, for causing the accused to be brought before the court. It is explicit from the provisions of clause (b) of sub section (1) of Section 204 of the Code that the warrant envisaged under clause (b) of Section 204 (1) of the Code is the warrant in lieu of the summons. Therefore, there can be no doubt that the

warrant envisaged under clause (b) of sub section (1) of Section 204 of the Code is not the warrant envisaged under Section 87 (b) of the Code, as the former is issued in lieu of summons whereas the latter is issued on the failure of the accused to appear on summons. Thus, it is clear that the ground for issuing the warrant under clause (b) of sub section (1) of Section 204 of the Code is distinct and different from the ground for issuing the warrant under Section 87 (b) of the Code.

9. Now the question is whether there is any need to pay any process fee by the complainant before issuing the warrant under Section 87 (b) of the Code. The said aspect is very much clear from the provisions of sub Section (5) of Section 204 of the Code, which provides that nothing in section 204 of the Code shall be deemed to affect the provisions of Section 87 of the Code. This would make it clear that the provisions of Section 87 of the

Code will not be affected by any provision in Section 204 of the Code, including sub section (4) of Section 204 of the Code. It is implied from sub section (5) of Section 204 of the Code that the provisions of Section 204 (4) of the Code mandating the complainant to pay process-fees or other fees payable under any law for the time being in force and the discretion of the court to dismiss the complaint if process-fees are not paid within a reasonable time, are not applicable under Section 87 of the Code. If that be so, there is no need to pay process-fees or other fees for issuing process under Section 87(b) of the Code.

10. It is true that there are rules prescribing fees for issuing summons, warrant etc. Rule 273 of the Criminal Rules of Practice, Kerala, provides that process fee shall be leviable at the rates prescribed from time to time under the Kerala Court Fees and Suits Valuation Act, 1959. Rule 274 of the Criminal Rules of

Practice, Kerala, provides that the parties applying for the issue of process shall file a batta memo containing the name, residence and full address of the person on whom the process is to be served together with the fees for such service. There can be no dispute that the word “person” referred to in the above rule includes an accused as well. Rule 274 of the Criminal Rules of Practice is applicable only when a party applies for the issue of process. In every case instituted upon a complaint, the complaint itself is an application for the issue of process against the accused. However, once the process issued is duly served on the accused, the question of applying again for the issue of process by the complainant does not normally arise. Thereafter, the courts used to resort to coercive steps to procure the presence of the accused before the court, without any further application from the complainant. It is clear from the provisions of Rule 274 of the Criminal Rules of Practice that the process fee envisaged in the

said rule is the process fee referred to in Section 204 of the Code, if a party applies for the issue of process against the accused. The Kerala Court Fees and Suits Valuation Act, contains “Table of Process Fee (Criminal Court)” prescribing the process fee chargeable for issuing summons, warrant, proclamation, attachment etc. The said process-fees as prescribed by the rules shall be paid to issue process under Section 204 (1) of the Code. However, there is no provision under Section 87 of the Code requiring the complainant to pay process-fee for issuing warrant under Section 87 (b) of the Code. Moreover, on a conjoint reading of sub sections (4) and (5) of section 204 of the Code and section 87 of the Code, it is clear that there is implied bar in calling upon the complainant to pay process fees or other fees to issue process under section 87(b) of the Code. In the absence of any provision requiring the complainant to pay process-fees for issuance of process under Section 87(b) of the Code, the

complainant cannot be called upon to pay process-fees for issuing steps under Section 87 (b) of the Code.

11. In this context, it is very relevant to consider as to whether the process fees or other fees are to be paid for issuing proclamation under section 82 of the Code. To answer this, it is necessary to read section 82 of the Code, which is extracted hereunder:-

“82. Proclamation for person absconding:- (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation”.

(2).....

(3).....

(4).....

(5).....”

12. Section 82(1) of the Code provides that if any court is satisfied that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such court may publish a written proclamation. Thus, it is clear that before initiating the proceedings for proclamation, the court will be issuing a warrant, which is referred to in section 82 of the Code. Therefore, there can be no doubt that the steps under Sections 82 and 83 of the Code are issued in continuation of the proceedings whereby the warrant has been proved to be ineffective to procure the presence of the accused before the Court. If the accused abstains from the court after the service of summons or after his appearance before the court or after his production before the court, then the warrant will be issued under section 87(b) of the Code, which requires no process fee to be paid by the complainant

in view of section 204(5) of the Code. Therefore, the subsequent steps under sections 82 and 83 of the Code also do not require any process fee to be paid by the complainant, even though there is no provision analogous to Sec. 204(5) of the Code exempting sections 82 and 83 of the Code from process fee provided in section 204 of the Code. Therefore, in such cases, the complainant need not pay any process-fee or other fee before issuing proclamation under section 82 of the Code or attachment under section 83 of the Code and consequently, the complaint cannot be dismissed in such cases under section 204(4) of the Code. However, if the steps are initiated under sections 82 and 83 of the Code before the service of summons or the appearance of the accused before the court or his production before the court, then the steps taken are in continuation of the warrant issued under section 204(1) (b) of the Code. Section 204 of the code provides process-fees for issuing steps. There is no provision

analogous to Section 204(5) of the Code exempting Sections 82 and 83 of the code from process-fee. Therefore, the complainant should pay the process-fees or other fees prescribed by the rules before issuing the steps under sections 82 and 83 of the code in such cases. Consequently, the Court is having the discretion to dismiss the complaint under section 204(4) of the Code in such cases for non-payment of process fee to issue steps under sections 82 and 83 of the code.

13. In a summons case, when the accused appears before the Court, the provisions of Chapter XX of the Code, which provides trial of summons cases by Magistrates, would come into operation. Chapter XX1 of the Code deals with summary trial. The provisions for the trial of warrant cases by the Magistrates are incorporated in Chapter X1X of the Code. In the said Chapter, Sections 238 to 243 deal with cases instituted on a police

report and Sections 244 to 247 deal with cases instituted otherwise than on police report, which are complaint cases. The third part of the said Chapter deals with matters relating to the conclusion of trial. There is no provision under Chapters XIX, XX and XXI of the code for dismissing the complaint for non-payment of process-fee for the issuance of warrant or other steps against the accused. There is also no provision under Section 87 (b) of the Code, to call upon the complainant to take steps to issue process. The only provision in the Code to dismiss the complaint for non-payment of the process fee is Section 204 (4) of the Code. Therefore, it is explicit that the Legislature never intended to dismiss the complaint for non-payment of the process fees after the service of summons on the accused or after his appearance before the Court or after his production before the Court.

14. Then what should be the procedure to be followed by the courts for issuing coercive steps against the accused in such

circumstances. This aspect will be very much clear when we understand the method of issuing process against the accused in a case transferred to the Register of Long Pending Cases. In the case of cases transferred to the Register of Long Pending cases, the courts do not call upon the complainant to pay process-fee to issue process against the accused. The process in such cases used to be issued at the State expenses. This would also give the message that no Welfare State can burden the complainant by directing him to pay the process fee again and again even after the service of summons on the accused. That may be the reason why the Legislature did not incline to incorporate any provision, after the stage under section 204 of the Code, requiring the complainant to pay process fees or other fees for issuing steps against the accused. Once the complainant takes steps and brings the accused before the court and thereafter, if his presence is to be procured before the court, it is the bounden

duty of the State to do the same. Merely because a complainant has approached the court with a complaint, he should not be penalised and burdened unnecessarily, without the sanction of law, in a Welfare State.

15. The above discussion would make it clear that the court has the power to direct the complainant to pay process fees or other fees, as prescribed under the Rules, for the purpose of issuing summons or warrant against the accused under section 204(1) of the code. If the accused fails to appear before the court as directed in the summons and the summons is proved to have been duly served and no reasonable excuse is offered for such failure, the court may issue a warrant for his arrest under section 87(b) of the code and not under section 204(1)(b) of the Code. The mandate under Section 204 (4) of the Code to pay process-fees or other fees payable under any law for the time being in

force and the discretion of the court to dismiss the complaint if process-fees are not paid within a reasonable time, are not applicable to the provisions of Section 87 of the Code in view of the provisions of sub section (5) of Section 204 of the Code. That apart, there is no provision under Section 87 of the code requiring the complainant to pay process-fee for issuing warrant under Section 87 (b) of the Code. Therefore, the courts should not require the complainant to pay process-fee for issuing warrant under Section 87 (b) of the Code and consequently, the court should not dismiss the complaint in such cases under Section 204 (4) of the Code for non-payment of process-fee. It is reiterated that if the accused abstains after the service of summons or after his appearance before the Court, the warrant will be issued under Section 87 (b) of the Code which requires no process fee to be paid by the complainant. The steps to be initiated under Sections 82 and 83 of the Code in such

cases are in continuation of the above said proceedings and consequently, the steps initiated in such cases do not require any process fee to be paid by the complainant. Therefore, the Court cannot dismiss the complaint under Section 204 (4) of the Code for non-payment of process fee in such cases. On the other hand, if the warrant is issued prior to the service of summons or appearance of the accused before the Court or his production before the Court, process fee is required to be paid by the complainant in view of the provisions of Section 204 of the Code. Consequently, in the further proceedings in such cases where Sections 82 and 83 steps are issued, the complainant is bound to pay the process fee and consequently, the Court is having the discretion to dismiss the complaint in such cases under Section 204 (4) of the Code for non-payment of process fee.

The above discussion would lead to the following conclusion:- a) If summons is issued in a case, the complainant

is bound to pay process fee; b) If warrant is issued in a case before the service of summons on the accused or before the appearance of the accused before Court, the complainant must pay process fee; c) If proceedings under Sections 82 and 83 of the Code are initiated in a case before the service of summons on the accused or before the appearance of the accused before the court, the complainant must pay the process fee; d) If warrant is issued after the service of summons or after the appearance of the accused before the court, the complainant need not pay any process fee; and e) If proceedings under Sections 82 and 83 are initiated after the service of summons on the accused or after the appearance of the accused before the Court, the complainant need not pay any process fee.

16. In “(a) to (c)” mentioned above, the court is vested with the discretion to dismiss the complaint under Section 204 (4) of

the Code for non-payment of the process fee. In (d) and (e) mentioned above, the court is not having the discretion to dismiss the complaint under Section 204 (4) of the Code for non-payment of process fee.

17. In the present case, the complaint was dismissed by the court below only after the appearance of the accused before the court below for the non-payment of process-fee for issuing steps under sections 82 and 83 of the code against the accused. It is true that the complainant was not present before the court below on that day. There was also no representation for the complainant before the court below on that day. However, the court below did not dismiss the complaint for the absence of the complainant, but for the failure of the complainant to pay the process-fee. Since the warrant, resulting in the issuance of proclamation under section 82 of the Code and attachment under

section 83 of the Code, was issued in this case under section 87 (b) of the Code, the complainant should not have been required to pay the process fees for issuing the proclamation under section 82 of the Code or attachment under section 83 of the Code and consequently, the complaint should not have been dismissed under section 204(4) of the Code. Therefore, the order impugned cannot be said to be legal, proper and correct and consequently, the same cannot be sustained.

18. In the result, this revision petition stands allowed setting aside the order impugned and the matter is remitted to the court below for proceeding with the complaint in accordance with law. The proceedings of the court below shall stand relegated to the stage prior to the dismissal of the complaint on 5-8-2014.

19. The parties shall appear before the court below on 12-10-2015 without further notice.

Registry will communicate a copy of this order to all the District and Sessions Judges who will ensure that the copy of the order is circulated among all the judicial officers in their respective district.

sd/-

B. SUDHEENDRA KUMAR,
JUDGE.

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True Copy

PS to Judge