

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

Crl.Rev.Pet.No. 1085 of 2015 ()

AGAINST THE JUDGMENT IN CRA 112/2013 of Addl. Sessions
Judge - I, Thiruvananthapuram, DATED 07-03-2015

AGAINST THE JUDGMENT IN CC 531/2005 of J.M.F.C.-IV,
NEYYATTINKARA DATED 14-02-2013

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

KOMALAKUMAR, AGED 60 YEARS
S/O.SHANMUGHOM ACHARY, RESIDING AT T.C.20/1603
SWATHI NAGAR, KARAMANA, THIRUVANANTHAPURAM
FROM SHANMUGHA VILASOM, ARAYOOR EST, MANNAN VILAKOM
ARAYOOR P.O., THIRUVANANTHAPURAM-695122.

BY ADV. SRI.MANU V.

RESPONDENT(S)/RESPONDENTS/STATE AND COMPLAINANT:

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

2. S.JOHNSON
PROPRIETOR, JOHNSON WOOD INDUSTRIES, CONVENT ROAD
PRAVACHAMBALAM, THIRUVANANTHAPURAM-685122.

R2 BY ADVS. M/S.K.M.SATHYANATHA MENON,
SRI.A.SANTHOSHKUMAR & SMT.KAVERY S THAMPI
BY PUBLIC PROSECUTOR SRI. V.S. SREEJITH FOR R1

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 06-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Dated this the 6th day of October, 2015

ORDER

The revision petitioner is the accused in C.C. No. 531 of 2005 on the files of the Court of the Judicial Magistrate of First Class -IV, Neyyattinkara. The trial Court convicted the revision petitioner under Section 138 of the N.I. Act and sentenced him thereunder to imprisonment till the rising of the Court and a compensation of Rs. 1,80,000/- with a default clause for simple imprisonment for two months.

2. The appeal filed against the said conviction and sentenced was dismissed by the appellate court as per judgment dated 7-03-2015 in Crl. Appeal No. 112 of 2013. Aggrieved by the said conviction and sentence, this Revision Petition has been filed.

3. Heard both sides.

4. The prosecution allegation is that the accused purchased timbers from the complainant and towards the discharge of the said liability, the accused issued Ext. P1 cheque in favour of the complainant. The complainant presented the cheque for

encashment. However, the same was dishonoured due to insufficiency of funds in the account of the revision petitioner. Statutory notice was issued to the revision petitioner which was received by the revision petitioner. However, the revision petitioner did not pay the cheque amount within the statutory period or thereafter.

5. Before the Court below, PW1 and PW2 were examined and Exts. P1 to P11 were marked for the prosecution. The revision petitioner himself got examined as DW1 and Exts.D1 to D4 series were marked for the defence.

6. The learned counsel for the revision petitioner, relied on the decisions of the Apex Court in *L.Laxmikanta v. State* [(2015) 4 SCC 222] and *Shridhar Namdeo Lawand v. State of Maharashtra* [2013 KHC 4659] and argued that the court below was not correct in disposing of the Criminal Appeal without hearing the counsel for the appellant and in the said circumstances, the judgment of the appellate court is not sustainable. The Apex court in the above said decisions held that the Court should not decide Criminal Appeals in the absence of the counsel for the accused as an accused in a criminal case should not suffer for the fault of his counsel and the Court should, in such a situation, appoint another counsel as an amicus curiae

to defend the accused. In this case, the court below disposed of the criminal appeal without appointing any advocate as amicus curiae.

7. The learned counsel for the revision petitioner has further argued that the court below did not consider the admission of PW1 that PW1 became the proprietor of the concern only during 2007, before disposing of the appeal. It has been further argued that the appellate court also did not consider about the non-production of the documents pertaining to the ownership of the concern prior to the period 2007. The learned counsel has also argued that the court below did not take into consideration of the evidentiary value of Exts. P7, P10 and P11 and also the impact of non-production of the account statement of the revision petitioner, while deciding the appeal. Having gone through the judgment of the appellate court, I am satisfied that the appellate court did not consider the above said aspects while disposing of the appeal. In the said circumstances, I am of the view that it is only just and proper to grant an opportunity to the accused of being heard and accordingly, I order so.

In the result, this revision petition stands allowed setting aside the judgment of the appellate court dismissing the appeal

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and the matter is remitted to the appellate court for fresh consideration of the appeal, in accordance with law, affording reasonable opportunity to the appellant to argue the appeal, untrammelled by any of the observations made in this order.

**B. SUDHEENDRA KUMAR,
JUDGE.**

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