

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

Crl.Rev.Pet.No. 1095 of 2015 ()

CRA 82/2015 of ADDL. SESSIONS COURT -II (SPL. COURT), KOTTAYAM
CMP 889/2015 of ADDL. SESSIONS COURT -II (SPL. COURT), KOTTAYAM
CC 230/2005 of J.M.F.C-1, KOTTAYAM

REVISION PETITIONERS/APPELLANT/ACCUSED:

C.M.REJI, S/O.MADHAVAN
CHIRAYIL HOUSE, KUZHIMATTOM P.O, KOTTAYAM.

BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.NANDAGOPAL S.KURUP

RESPONDENT/RESPONDENT/COMPLAINANT:

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1. STATE OF KERALA
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM. 682 031.
 2. KURIAN JACOB
ENNACHERIYIL HOUSE, KUZHIMATTOM P.O.
KOTTAYAM 685 001.

R1 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 07-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1095 of 2015

Dated this the 7th day of October 2015

O R D E R

The revision petitioner is the accused in C.C. No.230 of 2005 on the files of the Court of the Judicial Magistrate of First Class-1, Kottayam.

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 six months and to pay a compensation of Rs.10,000/- to the complainant under Sec. 357 (3) Cr.P.C. The revision petitioner filed appeal against the said conviction and sentence with a delay of

3565 days. The appellate court dismissed the delay petition. Consequently, the appeal was also dismissed. Aggrieved by the said dismissal of the appeal, the accused before the trial court has come up with this Revision Petition.

3. Service is complete. However, there is no appearance for the 2nd respondent.

4. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

5. The prosecution allegation is that the revision petitioner borrowed an amount of Rs.6,000/- from the complainant and towards the discharge of the said liability, the revision petitioner issued Ext.P1 cheque in favour of the complainant. The complainant presented the said

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 make payment of the cheque amount within the statutory period or thereafter.

6. Before the trial court, PW1 was examined and Exts.P1 to P6 were marked for the complainant. No evidence was adduced on the side of the defence.

7. It appears from the records that CrI.M.P. No.889 of 2015 was filed by the revision petitioner before the appellate court, for condoning the delay in filing the appeal. The said petition was dismissed by the appellate

court stating that there was no sufficient reason to condone the delay of nearly 10 years.

8. The revision petitioner contended before the court below that the revision petitioner was in Delhi in connection with his employment and hence, he arranged his wife to file appeal on his behalf. Thereafter, he sent the entire money to his wife for filing the appeal and settling the matter. However, she eloped with a person without filing the appeal or settling the matter. Out of shame and humiliation, the revision petitioner could not go to his native place and consequently, he was not able to get information regarding the position of the case and in the said circumstances, there occurred a delay of 3565 days in filing the appeal. It has been submitted by the learned

counsel for the revision petitioner that the entire money was subsequently paid by the revision petitioner. Considering the facts and circumstances of the case, including the fact that the jail sentence also forms part of the sentence, I am of the view that the delay in filing the appeal should have been condoned by the court below. Considering the facts and circumstances of the case, I am inclined to allow Crl.M.P. No.889 of 2015, condoning the delay in filing the appeal.

In the result, this revision petition stands allowed, setting aside the conviction and sentence passed by the appellate court. Crl.M.P. No.889 of 2015 stands allowed and Crl.Appeal No.82 of 2015 stands restored. The Criminal Appeal is remitted to the appellate court for fresh

CrI.R.P.1095/2015

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disposal in accordance with law.

The revision petitioner shall appear before the
appellate court on 2.11.2015.

sd/

**B.SUDHEENDRA KUMAR,
JUDGE**

dl

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PA to Judge