

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1102 of 2015 ()

ST 618/2015 of J.M.F.C.-II, KANNUR

REVISION PETITIONER/COMPLAINANT:

DIAMOND PAINTS, AGED 46 YEARS
EACHUR, REPRESENTED BY ITS PROPRIETOR
T. SANTHOSH KUMAR, S/O.LATE KRISHNAN
DIAMOND, P.O. KAPPAD
KANNUR.

BY ADV. SRI.K.RAJESH SUKUMARAN

RESPONDENTS/ACCUSED AND STATE:

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1. ARIF A.V.
S/O. ABDUL KHADER, MUKKATTIL HOUSE, VAYIPPARAMBA
AZHIKODE, P.O. KANNUR DISTRICT - 670 112.
 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

R2 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
26-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P.No.1102 of 2015

Dated this the 26th day of October 2015

ORDER

The revision petitioner is the complainant in S.T. No.618 of 2015 on the files of the Court of the Judicial Magistrate of First Class-II, Kannur, who in this revision petition challenges the order passed by the court below dismissing the complaint under Section 204(4) of the Code.

2. The revision petitioner filed a complaint against the first respondent herein before the Chief Judicial Magistrate Court under Section 138 of N.I. Act. After legal formalities, process was issued to the revision petitioner and the revision petitioner appeared before the Chief Judicial Magistrate Court, Thalasserry. Thereafter, the

learned Chief Judicial Magistrate, as per order dated 16.8.2014, returned the complaint for presentation before the proper court as directed by the Apex Court in **Dasharath Rup Singh Rathode v. State of Maharashtra and others** [2014(3) KHC 362 SC].

3. Thereafter, the complainant presented the case before the Court of the Judicial Magistrate of First Class-II, Kannur, being the proper court. Since there was no representation for the accused before that court, the court below ordered to issue process against the accused and posted the case to 6.6.2015. On that day, there was no representation for the complainant. The batta was also not paid. In the said circumstances, the complaint was dismissed by the court below under Section 204(4) of the Code.

4. Service is complete. However, there is no

appearance for the first respondent.

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

6. It is clear from order dated 16.8.2014 of the learned Chief Judicial Magistrate that the accused had appeared before that court through counsel. It appears that the complainant had initially taken steps for the appearance of the accused before the Court, before returning the complaint. Thereafter also, the complainant had taken steps for issuing process to the accused. On 18.4.2015, it was reported that the accused was abroad. Having gone through the relevant inputs, I am of the view that it is only just and proper to grant one more opportunity to the complainant to contest the matter on merits. For the said reason, I am inclined to allow this revision petition.

In the result, this revision petition stands allowed setting aside the order impugned and the matter is remitted to the court below, for fresh consideration of the matter in accordance with law. The proceedings of the court below shall stand relegated to the stage prior to the dismissal of the complaint on 6.6.2015. The revision petitioner shall appear before the court below on 20.11.2015 without further notice.

Sd/
B.SUDHEENDRA KUMAR,
JUDGE

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PA to Judge