

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

Crl.Rev.Pet.No. 1175 of 2015 ()

ST 3319/2011 of J.M.F.C.-I, KOLLAM

REVISION PETITIONER/COMPLAINANT:

USHA A
W/O.CHRISTIAN KUTTY, PARADISE, PADAPPAKKARA
MULAVANA P.O, KOLLAM-691503.

BY ADVS.SRI.BLAZE K.JOSE
SRI.M.RAJESH

RESPONDENTS/ACCUSED:

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1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
 2. BIJU.D @ BIJU JOSEPH
W/O.M.C.JOSEPH, KUMBALAM P.O., KOLLAM-691503
NOW RESIDING AT TD NAGAR-45, OPP.SBI, THEVALLY BRANCH
TD ROAD, KOLLAM-691013.

R1 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 23-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1175 of 2015

Dated this the 23rd day of September 2015

O R D E R

The revision petitioner is the complainant in S.T. No.3319 of 2011 on the files of the Court of the Judicial Magistrate of First Class-1, Kollam, who in this revision petition challenges the order passed by the court below under 204(4) Cr.P.C.

2. The revision petitioner filed a complaint against the second respondent herein before the court below alleging the offence under Section 138 of the Negotiable

Instruments Act. After complying with the legal formalities, process was issued to the second respondent, who was the accused before the court below. The second respondent appeared before the court below through the counsel. However, subsequently, the second respondent abstained from the court. In the said circumstances, warrant was issued against the 2nd respondent by the court below. When warrant was proved to be ineffective, steps under Sections 82 and 83 of Cr.P.C. were ordered by the court below on 7.11.2014. Thereafter, the case was posted the case to 19.12.2014. On that day, the court below directed the revision petitioner to take steps on that day itself and posted the case to 30.1.2015. On that day, steps were not taken as directed by the court. In the said

circumstances, the court below dismissed the complaint under Section 204(4) Cr.P.C.

3. It is clear from the proceedings of the court below, that the steps in question were ordered by the court only after the appearance of the accused before the court below. In view of the order of this court dated 22.09.2015 in Crl. R.P.No.1003 of 2015, the Court has no power to direct the complainant to pay the process fee after the appearance of the accused before the court. In such cases, the court has no jurisdiction to dismiss the complaint under Section 204 (4) Cr.P.C. For the said reason, the order impugned cannot be sustained.

In the result, this revision petition stands allowed setting aside the order impugned and the matter is remitted

CrI.R.P.1175/2015

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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 30.1.2015.

Sd//
B.SUDHEENDRA KUMAR,
JUDGE.

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/ True copy /

PA to Judge