

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

Crl.Rev.Pet.No. 1218 of 2015 ()

JUDGMENT IN CRA 439/2011 OF SESSIONS COURT, THALASSERY DATED 30-11-2011

JUDGMENT IN ST 3504/2008 OF JDCIAL FIRST CLASS MAGISTRATE-I, KANNUR
DATED 30.5.2011

REVISION PETITIONER/APPELLANT/ACCUSED:

M.P. SREEJITH, AGED 47 YEARS
CHAITHANIYA VOCATIONAL TRAINING CENTRE
NEAR VADHYAR PEEDIKA, MAIN ROAD THALASSERY
KANNUR (DIST), PIN: 670 101.

BY ADV. SRI.P.BABU

RESPONDENTS/RESPONDENTS/COMPLAINANT:

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1. CHANDRIKA DAILY
REPRESENTED BY ITS MANAGER, ABDUL GAFOOR, S/O.MOOSA
RAMANATTUKARA, KOZHIKODE
 2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM
- R BY PUBLIC PROSECUTOR SRI.R.GITESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 05-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER(S) 'S EXHIBITS:

ANNEXURE I: TRUE COPY OF THE DISCHARGE CARD ISSUED FROM THE LAKSHORE HOSPITAL, ERNAKULAM.

ANNEXURE II: TRUE COPY OF THE CHEMOTHERAPY PROTOCOL ISSUED FROM THE LAKESHORE HOSPITAL, ERNAKULAM.

RESPONDENT'S EXHIBITS:

TRUE COPY

PA TO JUDGE

Scl.

B. SUDHEENDRA KUMAR, J.

Crl. R.P. No. 1218 of 2015

Dated this the 5th day of October, 2015.

ORDER

The revision petitioner is the accused in ST No.3504 of 2008 on the files of the court of the Judicial Magistrate of First Class-I, Kannur.

2. The revision petitioner was convicted by the trial court under Section 138 of the Negotiable Instruments Act and sentenced thereunder to simple imprisonment for 15 days and to pay an amount of ₹13,200/- as compensation to the complainant under Section 357(3) Cr.PC. with a default clause for simple imprisonment for 15 days. The revision petitioner filed appeal against the said conviction and sentence with a delay of 39 days.

3. On 30.11.2011, there was no representation for the revision petitioner before the appellate court. No batta was also paid by the revision petitioner for issuing notice to the first respondent. In the said circumstances, the appellate

court dismissed the delay condonation petition on 30.11.2011. Consequent upon the dismissal of the delay condonation petition, Crl.A.No.439 of 2011 was also dismissed.

3. Heard the learned counsel for the petitioner.

4. It appears that the learned Sessions Judge did not dispose of the delay condonation petition on merits. The learned Judge dismissed the delay condonation petition for default. The sentence amended by the trial court includes imprisonment as well. Since the delay condonation petition was dismissed for default, the revision petitioner was denied the opportunity of being heard. In the said circumstances, it caused serious prejudice to the revision petitioner.

5. In the said circumstances, I am inclined to grant one more opportunity to the revision petitioner to contest the matter on merits. Consequently, the judgment of the appellate court dismissing the criminal appeal consequent upon the dismissal of the delay condonation petition cannot be sustained.

In the result, this revision petition stands allowed,

((1) setting aside the order in Crl.M.P.No.2301 of 2011 and the judgment in Crl.A.No.439 of 2011.

(2) the matter is remitted to the Sessions Court, Thalassery for fresh consideration of Crl.M.P.No.2301 of 2011 and Crl.A.No.439 of 2011 in accordance with law.

The proceedings of the appellate court shall stand relegated to the stage prior to the dismissal of Crl.M.P.No.2301 of 2011 and Crl.A.No.439 of 2011 on 30.11.2011. The revision petitioner shall appear before the Sessions Court, Thalassery on 20.10.2015.

**Sd/-
B. SUDHEENDRA KUMAR
JUDGE**

Scl.