

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1385 of 2015 ()

C.C. 592/2014 of J.M.F.C.-II, ERNAKULAM

REVISION PETITIONER/COMPLAINANT:

SHAMSUDHEEN K.M., AGED 35 YEARS
MANAGING PARTNER, M/S.UDAY CERAMIC WORLD, SEALOARD
CHERANALLOOR, KOCHI-682 034.

BY ADVS.SRI.C.U.SANGEETH
SMT.AMRITA JAYARAM

RESPONDENTS/ACCUSED & STATE:

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1. COCHIN GRANITES
REPRESENTED BY AUTHORISED PERSON AJI, 6/12A
ACHANKAVALA, MUVATTUPUZHA ROAD, MADAKKATHANAM.P.O.,
THODUPUZHA-696 670.
 2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 018.

R2 BY PUBLIC PROSECUTOR, BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 29-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1385 of 2015

Dated this the 29th day of October 2015

ORDER

The revision petitioner is the complainant in C.C. No.592/2014 on the files of the Court of the Judicial Magistrate of First Class-II, Ernakulam, who in this revision petition challenges the order passed by the court below dismissing the complaint under Section 204(4) of the Code.

2. Heard.

3. The revision petitioner filed a complaint before the court below against the first respondent herein alleging the offence under Section 138 of the N.I. Act. After complying

with the legal formalities, the court below issued summons to the accused. It appears from the proceedings sheet of the court below that the summons was issued on 26.4.2014 and the case was posted to 31.10.2014. The court below awaited return of summons to 18.11.2014. On 18.11.2014, the court below issued non-bailable warrant against the accused with a direction to the complainant to take steps within three days and posted the case to 2.12.2014. On that day, the complaint was dismissed by the court below under Section 204(4) of the Code, as the process fee was not paid by the complainant.

4. Since the warrant was issued against the accused, it presupposes that the summons was served. If that be so,

the complainant cannot be directed to pay process fee for issuing warrant against the accused in view of the decision of this Court in **Ayodya Printers v. State of Kerala** [2015 (4) KLT 251]. Since the summons was already served or tendered, the order passed by the court below dismissing the complaint for non-payment of process fee by the revision petitioner, cannot be said to be legal and correct and consequently, the same cannot be sustained.

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 complaint in accordance with law. The proceedings of the court below shall stand relegated to the stage prior to the

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dismissal of the complaint on 2.12.2014. The revision petitioner shall appear before the court below on 20.11.2015.

sd/
B.SUDHEENDRA KUMAR,
JUDGE

dl/31.10.2015

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PA to Judge