

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1455 of 2015 ()

AGAINST THE JUDGMENT IN CRL.A. 115/2014 OF SESSIONS COURT,
KASARAGOD 10-2-2015

AGAINST THE JUDGMENT IN CC 784/2010 of J.M.F.C.-I, HOSDRUG
DATED 05-06-2014

REVISION PETITIONER(S)/APPELLANT:

T.NARAYANAN, AGED 52 YEARS,
S/O. KANNAN, PALLATHINKAL, KUTTIKKOL POST
KUTTIKKOL VILLAGE, KASARAGOD DISTRICT.

BY ADVS.SRI.C.K.PRASAD
SMT.K.T.DIVYAMOL

RESPONDENT(S)/RESPONDENTS:

1. K.NAMAGANESAN
S/O. LATE KUNHAPPA, NEAR NITYANANDA ASRAMAM
HOSDURG P.O., KANHANGAD, KASARAGOD DISTRICT.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.RAHUL SASI & ADV. SMT. NEETHU PREM
R2 BY PUBLIC PROSECUTOR SRI. V.S. SREEJITH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 19-11-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
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.....

Dated this the 19th day of November, 2015

ORDER

The Revision Petitioner is the accused in C.C. No. 784 of 2010 on the files of the Court of the Judicial Magistrate of First Class -I, Hosdurg. The trial Court convicted the revision petitioner under Section 138 of the N.I. Act and sentenced him thereunder to simple imprisonment for three months and a fine of Rs. 70,000/-. The appeal filed against the said conviction and sentence was dismissed by the appellate court. Aggrieved by the said conviction and sentence, this Revision Petition has been filed,.

2. Heard both sides.

3. The appellate court passed an order on 10-2-2015 which is extracted hereunder:-

“Matter settled out of court on mediation as per report filed. Hence, appeal allowed on condition that if the appellant pays Rs.

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25,000/- to R1 herein on or before 6-6-2015, the appeal will stand allowed, in default, the appeal will stand dismissed and judgment under challenge would operate after 6-6-2015”.

The appellate court further passed an order on 6-6-2015, which is extracted hereunder:

“No amount was paid. Appeal dismissed”.

4. Having gone through the above orders, I have absolutely no hesitation to hold that the above orders are not legal, proper and correct. The appellate court should have disposed of the appeal on merits, if the appellate court had noticed that the condition in the mediation agreement was not complied with by the accused. Instead of doing that, the appellate court allowed the appeal subject to a condition and subsequently, when the said condition was not complied with, the appellate court dismissed the appeal, which is illegal.

5. It is settled law that once an appeal is admitted, the court has to dispose of the appeal only on merits. However, if the matter is compounded, then the accused shall be acquitted under Section 320 (8) Cr.P.C. If any condition is stipulated in the mediation agreement that the payment will be made on or before a particular date, the court must wait for the payment till that date and if payment is not made as per the mediation agreement, the Court shall dispose of the appeal on merits. The Court should not pass any conditional order disposing of the appeal which is illegal and incorrect.

6. Since the order impugned is not legal, proper and correct, the same cannot be sustained and consequently, I set aside the same.

In the result , this Revision Petition Stands allowed, setting aside the order impugned and the matter is remitted to the appellate court for fresh disposal of the appeal, in accordance with law, affording reasonable

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opportunity to both sides of being heard.

The parties shall appear before the appellate court on
22-12-2015 through counsel.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

Ani/ 20-11-2015

/true copy/

P.S. To Judge