

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 2293 of 2011 ()

CC 70/2009 of J.M.F.C.-III, KOTTARAKAKARA

REVISION PETITIONER(S)/COMPLAINANT:

DAMAYANTHI, W/O. THULASEEDHARAN,
AMBIKA MANDIRAM, PEZHUMMOODU, VALAUPACHA P.O
CHITHARA, KOTTARKKARA TALUK.

BY ADV. SRI.SAJU.S.A

RESPONDENT(S)/ACCUSED & STATE:

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1. S.SUSEELAN NAIR, S/O. SOMASUNDARAN NAIR,
CHEENIVILA VEEDU, VELLAMKUDI, ANAKUDY
KALLARA P.O, THIRUVANANTHAPURAM DISTRICT
POLICE STATION VENJARAMOODU, PIN 695 608.
 2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

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

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
15-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P.No.2293 of 2011

Dated this the 15th day of December 2015

O R D E R

The revision petitioner is the complainant in C.C. No.70 of 2009 on the files of the Court of the Judicial Magistrate of First Class - III, Kottarakkara. The revision petitioner filed a complaint against the first respondent herein under Section 138 of the Negotiable Instruments Act. The said complaint was dismissed by the court below under Section 204(4) of the Code, stating that the revision petitioner did not take steps to issue process against the first respondent herein, who is the accused before the court below.

2. Heard.

3. It appears from the proceedings sheet of the court below that the accused had already appeared before the court below in response to the summons and he was granted bail by the court below. Thereafter, the accused abstained from the court below. In the said circumstances, the court below ordered coercive steps against the accused with a direction to the complainant to take steps. In view of the decision of this Court reported in **Ayodya Printers v. State of Kerala** [2015(4) KHC 897], the court below had no power to direct the complainant to pay the process fee after the appearance of the accused once before the court. This court further held in **Ayodya Printers** (supra) that in such circumstances, the court had no power to

dismiss the complaint under Section 204(4) of the Code. In view of the above decision, the order impugned cannot 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 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 27.4.2011.

The revision petitioner shall appear before the court below on 12.1.2016.

sd/-

B.SUDHEENDRA KUMAR,

JUDGE

dl/16.12..2015

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PA to Judge