

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

Cr1.Rev.Pet.No. 1997 of 2014 ()

AGAINST THE ORDER IN CRL.A 456/2013 of SESSIONS COURT,TRIVANDRUM
DATED 22-08-2014

AGAINST THE JUDGMENT IN CC 12/2012 of J.M.F.C.-III, NEDUMANGAD
DATED 31-10-2013

REVISION PETITIONER/APPELLANT/ACCUSED:

NAZEEMA, AGED 54 YEARS,
W/O.NIZARUDEEN, SHANI MANZIL, PARANKIMAMTHOTTAM,
VITHURA.P.O, THIRUVANANTHAPURAM DISTRICT-695B551.

BY ADVS.SRI.MANJU ANTONEY
SMT.B.WALSOM JEE SINILLO
SRI.R.ANAS MUHAMMED SHAMNAD

RESPONDENTS/RESPONDENTS/STATE/COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF HOME THROUGH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.

2. SHAIJU,
S/O.VARGHESE, THIRUVONAM HOUSE, PULIPARA,
NEDUMANGAD, THIRUVANANTHAPURAM DISTRICT-695 541.

R2 BY ADV. SRI.A.G.ANILKUMAR
R1 BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
19-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. RAMAKRISHNAN, J.

.....
Crl.R.P.No.1997 of 2014
.....

Dated this the 19th day of February, 2015.

O R D E R

The accused in C.C.No.12/2012 on the file of the Judicial First Class Magistrate Court -III, Nedumangad is the revision petitioner herein.

2. The case was taken on file on the basis of a private complaint filed under section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act' for short). After evidence, the court below found the revision petitioner guilty under section 138 of the Act and convicted her thereunder and sentenced her to undergo simple imprisonment for six months and also to pay a fine of ₹50,000/-, in default to undergo simple imprisonment for three months more. Aggrieved by the same she filed Crl.A.No.456/2013 before the Sessions Court, Thiruvananthapuram and the learned Sessions Judge by the impugned judgment dismissed the appeal as there was no representation and no step was taken to serve notice on the first respondent in the court below. This is being challenged by the revision petitioner by filing this revision.

3. Heard.

4. It is an admitted fact that the appeal was dismissed for not taking steps. So dismissal can be only under section 204 of the Code of Criminal Procedure (hereinafter referred to as 'the Code' for short) as the process for service of notice as directed has not been paid. It is true that under section 204 of the Code the court has got power to dismiss the complaint or appeal, if process is not taken. But it is not always mandatory but it is only directory and in appropriate cases that the court can grant opportunity to the defaulting party to pay process and try to dispose of the case on merits. In this case it is seen that the appeal was dismissed as no step was taken in spite of last chance granted and there was no representation as well. But the learned counsel for the revision petitioner submitted that since the mother of the counsel appearing for the appellant was hospitalized and she was in death bed, he could not attend in court and later his mother died also and that was the reason why the counsel for the appellant could not take steps. Further considering the circumstances and also considering the fact that it is a criminal appeal and an opportunity has to be given to the accused in a criminal case to have the cases decided on merits, this Court feels that opportunity has to be given to the revision

petitioner to meet the case on merit. For that purpose the order of dismissal passed by the court below has to be set aside and the matter has to be remitted back to the court below for fresh disposal in accordance with law.

So the revision is allowed and the order dismissing the appeal for not taking steps by the impugned judgment by the court below is set aside and the matter is remitted to the Sessions Court, Thiruvananthapuram for fresh disposal. In order to avoid delay in disposal of the appeal, as the case is filed under section 138 of the Act and the complaint is of the year 2008, this Court feels that directing the parties to appear before the appellate court and directing the appellate court to dispose of the case as expeditiously as possible within a time frame will be sufficient and that will meet the ends of justice as far as both the parties are concerned. So parties are directed to appear before the court below on 9.3.2015 and if both the parties appear on that day, then the sessions court is directed to dispose of the appeal after hearing both sides as expeditiously as possible, at any rate, before the court closes for summer vacation. But if the complainant did not appear as directed by this Court, then the court below is directed to give an

opportunity to the appellant, who is the revision petitioner herein to take steps within one week from 9.3.2015 and after completing the service, expedite disposal of the appeal within two months from the date of appearance of the complainant or service on the complainant is completed. Since appeal has been restored, order of suspension granted by the court below will continue till the disposal of the appeal on the same terms on which the suspension of the sentence was granted by the court below.

Office is directed to communicate a copy of this order to the concerned court by fax immediately.

Sd/-

K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

