

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

WP(C).No. 25718 of 2015 (L)

PETITIONER(S):

**P.P.KURIAKOSE,
PULLUKKATTU HOUSE, THRIKODITHANAM P.O.,
CHANGANASSERY, KOTTAYAM - 686 105.**

BY ADV. KUM.D.MINI RAJAN

RESPONDENT(S):

- 1. T.P.PANKAJAKSHAN,
ADVOCATE, ILLIKUNNU, THALASSERY,
KANNUR DISTRICT - 670 101.**
- 2. STATE OF KERALA,
REPRESENTED BY SECRETARY, DEPARTMENT OF LAW,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**

R2 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
08-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 25718 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1- TRUE COPY OF THE ORDER OF THE BAR COUNCIL OF KERALA
DATED 16.04.2015.**
- P2- TRUE COPY OF THE COMPLAINT DATED 17.3.2014 SUBMITTED BY THE
PETITIONER BEFORE THE VIGILANCE REGISTRAR.**
- P3- TRUE COPY OF THE ORDER DATED 10.6.2014.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

[CR]

B.KEMAL PASHA, J.

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W.P.(C).No.25718 of 2015

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Dated this the 8th day of October, 2015

J U D G M E N T

It seems that a person suffering from Cancer, who is in the acute stage, was the accused in a case under Section 138 of the Negotiable Instruments Act. He was convicted and sentenced by the learned Magistrate. Challenging the conviction and sentence, he has filed an appeal through a counsel. In the appeal, the learned counsel for the appellant has failed to appear and therefore, the appeal was dismissed.

2. When the petitioner herein, who is that unfortunate appellant approached his counsel, who was engaged in the appeal, the said counsel returned the Advocate fee obtained by him and begged for pardon and

advised the petitioner to file a revision. Ultimately, the petitioner preferred Crl.R.P.No.167 of 2011. This Court admitted the Revision and ordered the petitioner to deposit an amount of ₹75,000/- out of the cheque amount before the court below within a specified period.

3. The counsel, who was engaged to file the Crl.R.P., obtained the said amount of ₹75,000/- from the petitioner for depositing it in the case, along with another amount of ₹18,000/- as Advocate fee and vanished from the scene. He did not care to appear before this Court in the Revision thereafter. The amount obtained was not deposited before the court below. As the counsel had not turned up, this Court had ultimately dismissed the Crl.R.P. It was after more than one year, when coercive steps came against the petitioner, he came to know about the dismissal of the Crl.R.P., when enquiries were made. The lawyer, who had received the amounts from him, has not cared to return the amount.

4. The petitioner complained about the matter before

the Bar Council of Kerala. The Bar Council initiated disciplinary actions against the said lawyer. The Disciplinary Committee of the Bar Council found the said lawyer guilty of professional misconduct, and for the same he is suspended from practice for a period of six months starting from 29.03.2015.

5. Merely by suspending the practice of the said lawyer, the petitioner will not get back the amounts snatched away by the lawyer. It is a pity that even when there is concrete allegation, which was not defended by the said lawyer that the amount of ₹75,000/- obtained by the said lawyer for depositing before the court below in case was not deposited, no steps have been taken by the Bar Council to get the amount reimbursed to the petitioner. The Bar Council shall consider the matter and see that some provision is made for the same to ventilate the grievance of the poor petitioner, who is a chronic Cancer patient. It has to be thought of whether the said amount of ₹75,000/- as well as the amount of ₹18,000/- obtained by the said lawyer can be reimbursed to

the petitioner, from the amounts, if any due to the said lawyer from the Kerala Advocates' Welfare Fund.

6. This Court cannot say that the complainant in the case against the petitioner should not get the amount covered by the cheque. At the same time, it is a fact that the petitioner did not get an opportunity to have his appeal considered and further to have the Revision considered, on merits.

With liberty to the petitioner to move in the Revision once again, if so advised, this Writ Petition (Civil) is closed. The Bar Council of Kerala is directed to look into the matter and to take appropriate steps to realise the amounts unlawfully obtained by Adv.Sri.T.P. Pankajakshan from the petitioner and to reimburse the same to the petitioner.

Registry is directed to forward a copy of this judgment to the Bar Council of Kerala, for appropriate action.

**B. KEMAL PASHA
JUDGE**