
(2013) 03 KL CK 0105
In the High Court Of Kerala
Case No : Crl. Rev. Pet. No. 457 of 2013

Abdul Aziz

APPELLANT

Vs

Muneer and State of Kerala

RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Citation : (2013) 03 KL CK 0105

Hon'ble Judges : K. Harilal, J

Bench : Single Bench

Judgement

K. Harilal, J.—The Revision Petitioner is the accused in C.C. No. 21/2008 on the files of Judicial First Class Magistrate Court-II, Kasaragod as well as the appellant in Criminal Appeal No. 32/2011 on the files of Court of Session, Kasaragod. He was prosecuted for the offence punishable u/s 138 of the Negotiable Instruments Act, on a complaint filed by the 1st respondent herein. After trial, the learned Magistrate found the accused guilty of the offence punishable u/s 138 of the Negotiable Instruments Act and convicted thereunder. He was sentenced to undergo simple imprisonment for three months and to pay Rs. 90,000/- to the 1st respondent as compensation u/s 357(3) of the Code of Criminal Procedure. In default, to undergo simple imprisonment for one month. He has preferred an appeal with a petition to condone the delay of 921 days in filing the appeal. The learned Sessions Judge dismissed the petition to condone delay. Consequently, the appeal also has been dismissed as barred by limitation, without considering the merits of the case.

2. The learned counsel for the Revision Petitioner submits that the learned Sessions Judge ought not to have dismissed the appeal without considering the merits consequent to the dismissal of the petition to condone the delay. The learned counsel for the Revision Petitioner cited the decision in *Safar v. State of Kerala* [2011(2) KHC 674] to fortify his argument.

3. I have considered the submissions made at the Bar in view of the decision cited by the learned counsel for the Revision Petitioner. Paragraphs 6 and 7 in the

decision in *Safar v. State of Kerala* [2011 (2) KHC 674] reads as follows.

6. On going through the order impugned, it appears to me that the contention of the learned counsel bears some force and substance. In the impugned order, there is no reference to any of the facts and circumstances involved in the case. Probably, the petitioner filed u/s 5 of the Limitation Act was dismissed by a separate order. But, still then, in the order on the appeal, there is no reference as to what was the actual number of days of delay and on what ground, the said petition was dismissed. However, the Honourable Apex Court in the decision reported in *Sita Ram v. State of Madhya Pradesh* has held that dismissal of appeal against conviction on the ground of delay is not proper.

7. In the present case, the allegation against the petitioner is that he attempted to commit theft after lurking into the house of the de facto complainant. So the prosecution has to prove the case beyond reasonable doubt and the question whether the prosecution has succeeded in discharging its duties is a matter to be considered during the trial and in the present case, the learned Magistrate of the Trial Court has come to a conclusion in favour of the prosecution and held that the accused has committed the offence. Of course, the appeal is the continuation of the trial where the convicted person will get one more opportunity to get appreciated the evidence and materials on record in a superior forum and such convicted person can raise the plea for acquittal and it is, thus, for the Appellate Court to consider the plea on merit. But, in the present case, the learned Sessions Judge without going into the merits of the case simply dismissed the appeal, not by a judgment, but by an order that too for the reason that the delay petition was dismissed. Therefore, according to me, the order impugned is not sustainable and the same is liable to be set aside, especially in the light of the decision of the Apex Court cited supra.

In view of the above decision, I set aside the impugned judgment under challenge and remit the case to the Court of Sessions, Kasaragod for fresh consideration on merits and disposal in accordance with law, within a period of two months, from the receipt of the copy of this judgment.

The learned counsel for the Revision Petitioner submits that the Revision Petitioner is undergoing substantive sentence of imprisonment. If he is undergoing imprisonment, he shall be released on bail on condition that the Revision Petitioner executes a bond for Rs. 1,00,000/- with two solvent sureties each for the like sum to the satisfaction of the Judicial First Class Magistrate Court-II, Kasaragod.

The Criminal Revision Petition is disposed of accordingly.