

Vijayan Vs. State of Kerala

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Court : Kerala

Decided On : Feb-18-2005

Reported in : III(2005)BC480; 2000CriLJ1199; 2005(2)KLT344

Judge : M. Sasidharan Nambiar, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138 and 142

Appeal No. : Crl. R.P. No. 257 of 2005

Appellant : Vijayan

Respondent : State of Kerala

Advocate for Def. : K.J. George, Public Prosecutor

Advocate for Pet/Ap. : Sasthamangalam S. Ajithkumar,; Krishnadas P. Nair, ; P

Disposition : Petition allowed

Judgement :

ORDER

M. Sasidharan Nambiar, J.

1. Complainant in C.M.P. Nos. 2628/04, 2631/04, 2629/04 and 2630/04 is the revision petitioner. Respective petitions were filed to condone delay in lodging complaint. The complaint was filed under Section 138 of N.I. Act. All petitions were

dismissed by the Court below as per separate orders on the ground that petitioner was absent and no steps were taken to issue notice to accused. It is seen from the order itself that revision petitioner was represented by a counsel though complainant was absent. Learned counsel appearing for petitioner contended that accused has no right to be heard before cognizance of the offence was taken. Argument is that as delay has to be condoned before taking cognizance, accused cannot be heard at the pre-cognizance stage. I cannot agree with the submission. In a complaint filed for the offence under Section 138 of N.I. Act, it may not be proper to deny opportunity to the accused to defend the case on the ground of delay which would be available to him. If the argument of the learned counsel appearing for the revision petitioner is to be upheld that opportunity would be lost to the accused. It cannot be the intention of the Legislature in enacting the amended Section 142. Even though the delay in filing the complaint can be condoned, it is not automatic. Learned counsel would submit that failure to take steps in all the case was due to the mistake in his office and the complainant may not be asked to suffer the consequences. It cannot be said that a complainant would purposely fail to take steps in a complaint filed under Section 142 of N.I. Act. Interest of justice warrants an opportunity to be granted.

2. Revisions are allowed. Impugned orders passed by the learned Magistrate dismissing the respective petitions are set aside. C.M.P. Nos. 2628/04, 2631/04, 2629/04 and 2630/04 are restored back to file. Revision petitioner is directed to take steps within ten days from this date. Court below to proceed with the proceedings in accordance with law.

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