

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

CRL.A.No. 670 of 2007 ()

**AGAINST THE JUDGMENT IN CC 534/2006 of JUDICIAL FIRST CLASS MAGISTRATE,
KAYAMKULAM DATED 06-11-2006**

APPELLANT(S)/COMPLAINANT:

**K.P.VARGHESE, S/O.PAULOSE,
AGED 40 YEARS, KOTTALLIL HOUSE, PALLICKAL P.O.
KATTANAM VILLAGE, KAYAMKULAM.**

BY ADV. SRI.T.D.ROBIN

RESPONDENT(S)/ACCUSED:

**1. SALIM RAJKUMAR, S/O.APPU,
AGED ABOUT 51 YEARS, SURYAMANA 42
K.P.PANKAJAKSHAN ROAD, THRIKANARVATTOM
ERNAKULAM NORTH P.O., KANAYANNOOR TALUK, ERNAKULAM.**

**2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

**R1 BY ADV. SRI.P.I.DAVIS
BY PUBLIC PROSECUTOR SRI. C.K. JAYAKUMAR**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 670 of 2007

Dated this the 15th day of September, 2015

J U D G M E N T

Aggrieved by the order of acquittal under Section 256 (1) of the Cr.P.C., the complainant has come up in appeal.

2. According to the complainant, for liability that existed towards him, the accused issued a cheque for ₹2,00,000/- drawn on Syndicate Bank, Ernakulam. The Cheque on presentation bounced for want of funds and notice was issued to the accused. There was no reply nor was the amount paid and so the complaint was laid.

3. Cognizance of the offence was taken and summons was issued to the accused after following the necessary procedures. The accused appeared before the court below and pleaded not guilty. On all occasions the complainant was present except on 23.09.2006 and 06.11.2006.

4. There were postings on 15.06.2006, 25.07.2006, 26.08.2006, 23.09.2006, 20.10.2006 and 06.11.2006. On all posting dates the complainant was present except on 06.11.2006 and 23.09.2006

5. Unfortunately, the complainant could not present on 06.11.2006 on the day on which the case was posted for evidence ultimately. The complainant points out that there were no willful laches on his part and he had informed his counsel that he would be coming to the court within the stipulated time and his counsel simply believing it to be so, was not present in the court when the case was called. The accused pointed out that he was caught up in a traffic jam and that cause his non appearance when the case was called up.

6. The counsel appearing for the appellant pointed out that the appellant has been very prompt in appearing on all days except the two days already made mention of. The absence on 23.09.2006 and 06.11.2006 was not willful and

occurred due to reasons beyond his control. The learned Magistrate ought not have dismissed the complaint and ought to have given an opportunity to establish his case.

7. After having heard the learned counsel for the appellant and after having perused the records, there seems to be considerable force in the above submission. The court below should have noticed that almost on all days the complainant was present and it was due to reasons beyond his control that he was absent on 06.11.2006. It is no doubt true that the court has tentatively posted the case for taking evidence on that day. But the explanation offered by the appellant seems to be reasonable and just.

For the above reasons, this appeal is allowed. The impugned order is set aside and the matter is remanded to the trial court for fresh disposal in accordance with law. The parties shall appear before the lower court on **27.10.2015**.

**P.BHAVADASAN
JUDGE**