

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

CRL.A.No.464 of 2008

AGAINST THE JUDGMENT IN CC 608/2003 of JUDICIAL FIRST CLASS
MAGISTRATE-1, ERNAKULAM DATED 29.11.2006.

APPELLANT (COMPLAINANT):

K.M.PETER, KUZHIYANJAL HOUSE
ARAKUNNAM P.O., MULANTHURUTHY, ERNAKULAM.

BY ADV. SRI.M.HARISHARMA

RESPONDENTS (ACCUSED & STATE):

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1. V.J.JOSE, KULANGARAYIL HOUSE,
IDAYAR P.O., KOOTHATTUKULAM.
 2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR.

R2 BY SMT.LILLY LESLIE, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.464 OF 2008

Dated this the 26th day of October, 2015.

J U D G M E N T

Against an order of acquittal under Section 256(1) of the Code of Criminal Procedure, the complainant has come up in appeal.

2. According to the complainant, in order to discharge a debt due to him, accused issued a cheque for a sum of Rs.1,80,000/- which, according to the complainant, bounced for want of funds. Statutory notice issued invoked no response. Hence complaint was laid.

3. Cognizance of the complaint was taken and summons was issued to the accused.

4. Learned counsel appearing for the appellant-complainant has produced before this Court a certified copy of the proceedings in C.C.No.608/2003. It is seen from the said proceedings that complainant was absent on 15.11.2006, 27.11.2006 and 29.11.2006. The proceedings also shows that in spite of the

direction to appear the complainant in person, he was not present and therefore the complaint was dismissed.

5. What is interesting is that the proceedings does not appear whether the accused had entered appearance and process was being issued against him. On several occasions, case was adjourned on notification. It is pointed out that on 08.03.2006, the matter was reposted to 16.06.2006 and that is not seen in the case diary and therefore the said posting was omitted to be taken note of by the complainant and so also the subsequent postings. It is difficult to understand the purpose for which the complainant is directed to be appear in person on 29.11.2006 without a process is being issued against or served on the accused. Nowhere in the proceedings it is seen that the complainant had failed to take any steps as ordered by the court. There is nothing to show that there has been willful flouting of any of the order of the court below. Under these circumstances, court below ought not to have dismissed the complaint and acquitted the accused under Section 256(1) Cr.P.C.

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 and in the light of what has been stated above. The parties shall appear before the trial court on 20.11.2015. The court below may make every endeavour to dispose of the matter as expeditiously as possible.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

// True Copy //

P.A to Judge.