

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

CRL.A.No. 1570 of 2004 (A)

AGAINST THE ORDER IN CrI.L.P. 488/2004 of HIGH COURT OF KERALA DATED
09-08-2004

AGAINST THE ORDER/JUDGMENT IN CC 985/1999 of J.M.F.C.,PALA
DATED 29-03-2004

APPELLANT/COMPLAINANT:

JOY THOMAS, MUTHUPLACKAL HOUSE,
MOONNILAVU KARA, MEENACHIL TALUK.

BY ADV. SRI.BABY THOMAS

RESPONDENT/ACCUSED(S):

1. BENNY S.THOMAS, KADATTUKULAM HOUSE,
THAIKKATTU KARA, ALWAYS P.O.
2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R2 BY ADV. PUBLIC PROSECUTOR SMT.P.MAYA

R1 BY ADV. SRI.BENOY K.KADAVAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.UBAID, J.
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**Crl.A No.1570 of 2004**  
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Dated this the 21st May, 2015

J U D G M E N T

A judgment of acquittal under Section 256 (1) of the Code of Criminal Procedure in a prosecution brought under Section 138 of the Negotiable Instruments Act is under challenge. When the complainant remained absent on the day fixed for trial of the case, the learned Magistrate acquitted the accused (1st respondent herein) by order dated 29.3.2004. The complaint in this case was filed long back in 1999. The cheque amount involved in the prosecution is ₹80,500/-. The impugned order does not show that the complainant was consistently absent, or that he remained absent whenever the case came up for consideration. On the other hand, there is reason to believe that the trial, or consideration of the prosecution was delayed only because the accused absconded. Now the accused is very much present before this Court, represented by a counsel of his choice. In the above circumstances, it is appropriate that the case be tried and decided on merits. A

complaint brought in 1999 involving an amount of ₹ 80,500/- happened to be mechanically closed by order of acquittal in 2004, and that too in a circumstance where the accused absconded. It is really cruel, unjust and inappropriate that the prosecution happened to be thus closed. In the interest of justice, I feel it absolutely necessary that the case be tried and disposed of on merits.

In the result, this appeal is allowed. The impugned order of acquittal by the Judicial First Class Magistrate Court, Pala in C.C No.985 of 1999 will stand set aside, and the case will stand remitted to the court below for trial and disposal on merits. The parties will appear in the trial court on 30.6.2015. The Registry will immediately transmit the case records to the trial court.

**Sd/-
P.UBAID
JUDGE**

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/True copy/

P.S to Judge