

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE P.D.RAJAN**

**WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937**

**CRL.A.No. 1720 of 2004 ( )**  
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**AGAINST THE ORDER IN CC 1876/2001 of ADDL.C.J.M., ERNAKULAM**  
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**APPELLANT(S):**  
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**M/S.VEDEOCON INTERNATIONAL LIMITED,  
M.G.ROAD, ERNAKULAM, REPRESENTED BY  
POWER OF ATTORNEY HOLDER MR.JOSHY JOSEPH,  
ACCOUNTS OFFICER.**

**BY ADVS.SMT. A.A.SHIBI (LEGAL AID COUNSEL)**

**RESPONDENT(S)/ACCUSED:**  
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- 1. RAJU. S., PARTNER,  
M/S.MONY'S RADIO SERVICES,  
MAIN ROAD, KOLLAM-1.**
- 2. MONY'S RADIO SERVICES,  
MAIN ROAD, KOLLAM-1 REPRESENTED BY ITS  
PARTNER S.RAJU.**
- 3. STATE OF KERALA REPRESENTED BY  
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA  
ERNAKULAM.**

**R3 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 29-07-2015, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**STK**

**P.D. RAJAN, J.**

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**Crl.Appeal 1720 of 2004**  
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**Dated this the 29<sup>th</sup> day of July, 2015**

**JUDGMENT**

The appellant who is the de-facto complainant in C.C.1876/01 of Additional Chief Judicial Magistrate, Ernakulam, challenges the order of acquittal passed under Section 256(1) Cr.P.C. The above case was filed under Section 138 of the Negotiable Instruments Act.

2. Appellant, the company represented by its Power of Attorney Holder, contended that the second respondent is the authorised dealer and in discharge of a liability, first respondent paid a part payment of Rs.10,000/- by issuing a cheque. When it was presented for encashment cheque was dishonoured for the reason of 'exceeds arrangement'. After complying the statutory formalities, he filed the above complaint. After taking the sworn statement of the de-facto complainant, the case was posted on 5.7.2004 for the appearance of the de-facto complainant. On that day, appellant as well as the accused were absent. No representation from both the sides. In this circumstance, the accused was

acquitted under Section 256(1) Cr.P.C. Against that acquittal, appellant approached this court with this appeal.

3. After filing this appeal, there was no representation from the side of the appellant for several times. Steps were not taken and process was not filed. In this circumstance, this court appointed Adv.A.A.Shibi as the counsel to provide legal aid to the appellant. She contended that appellant was held up in traffic block and he could not appear before court on 5.7.04. In that circumstance, the trial court without application of mind acquitted the accused. The learned counsel appearing for the appellant prayed to remit the matter to trial court for disposal on merit. She also relied one decision in **Crl.M.C.2749/2011** of High Court of Delhi.

4. If the summons has been issued on complaint and on the day appointed for the appearance of the accused, or any day subsequent thereto, to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything

hereinbefore contained, acquit the accused unless for some reason he thinks it proper to adjourn the hearing of the case to some other day. If the complainant is represented by a pleader or by officer conducting prosecution or where the Magistrate is of the opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

5. Here, the case was filed in the year 2001 and the disposal of the case was made on 5.7.04, the learned Additional Chief Judicial Magistrate observed that complainant and accused were absent and there was no representation. Even though, the learned counsel submitted that the appellant was held in traffic block and he could not reach the court, no documents were produced by him to show that he was vigilantly prosecuting the case in the trial court.

6. It is true that after filing the complaint, different situations may arise. When the case was called, no reasons are stated for the absence of the complainant.

Naturally the court would presume that he is not interested in prosecuting the mater. This view was observed by the High Court of A.P. in **Public Prosecutor V. Syed Shaka (1976 Crl.L.J 289)**. I have noticed the approach of the appellant after filing this appeal. No steps were taken by the appellant for giving notice to the respondents. If that be the position, the appellant is not interested in prosecuting the matter legally and there is no merit in this appeal.

Hence, I confirm the order passed by the trial court and accordingly this appeal is dismissed.

STK

Sd/-  
**P.D. RAJAN,**  
**JUDGE**

//TRUE COPY//

P.A. TO JUDGE