

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

CRL.A.No. 1 of 2015 ()

**AGAINST THE ORDER/JUDGMENT IN Cri.L.P. 429/2014 of HIGH COURT OF KERALA
DATED 3.12.2014**

**AGAINST THE ORDER IN CC 60/2012 OF CHIEF JUDICIAL MAGISTRATE COURT,
ALAPPUZHA DATED 12.8.2014**

APPELLANT/COMPLAINANT:

**SHAJI JOSEPH, AGED 45 YEARS
S/O.JOSEPH, KALLUPURICKAL, KALATHU WARD
ALAPPUZHA**

**BY ADVS.SRI.C.S.MANU
SRI.S.K.PREMRAJ
SRI.V.S.PREJITH**

RESPONDENTS/ACCUSED AND THE STATE:

**1. SHIYA RINEETTA ANTONY
FLAT NO 11B, MATHER BUILDING
GREAT ORCHARD VIDYA NAGAR, COCHIN**

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

R2 BY PUBLIC PROSECUTOR SRI. GITHESH R.

**THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 04-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

SHG/

K. ABRAHAM MATHEW, J.

Crl.A. No.1 of 2015

Dated this the 4th day of February, 2015

J U D G M E N T

The appellant was the complainant in C.C.60/2012 on the file of the Chief Judicial Magistrate, Alappuzha. The allegation was that the first respondent/accused committed the offence under Section 138 of N.I. Act. On 12.8.2014 the first respondent was acquitted under Section 256(1) Cr.P.C. The trial court observed that though several chances were given to the appellant to adduce evidence he remained absent. The learned counsel for the appellant submits that a lenient view may be taken and the order of acquittal may be set aside.

2. Heard the learned counsel for the appellant. The case first came up for evidence on 28.11.2012 and the order of acquittal was passed on 12.8.2014; in between these two dates there were several postings for the evidence of the appellant. On most of the posting dates he remained absent. On 14.8.2013 the court adjourned the case to 23.10.2013 observing that that was the last chance for him

to adduce evidence. Thereafter, on 16.5.2014 the court posted the case “for evidence finally” to 8.7.2014. On that day also the appellant was not ready to adduce evidence and he remained absent. The case was again adjourned to 12.8.2014 “finally”. Still the appellant did not appear before the court to adduce evidence.

3. Learned counsel for the appellant submits that the accused also was absent on several posting dates. That is not at all relevant because the presence of the accused was not necessary to record evidence of the appellant. The accused was represented by a counsel. So his absence is no ground to hold that the order of acquittal was not justified.

4. The first respondent/accused is a lady. The case was pending for more than two years. The proceedings itself became a punishment for her. The trial court was fully justified in invoking the provision under Section 256 (1) Cr.P.C. There is no merit in the appeal.

In the result, this appeal is dismissed.

Sd/-
K. ABRAHAM MATHEW
JUDGE
//True copy//
P.A. TO JUDGE

shg/