

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

CRL.A.No. 10 of 2015 (A) IN Cr1.L.P..466/2014

(AGAINST THE ORDER/JUDGMENT IN ST 557/2012 of J.M.F.C.,TALIPARAMBA
DATED 12-11-2014)

APPELLANT(S)/COMPLAINANT:

P.BALAKRISHNAN
S/O.GOVINDAN NAMBIAR, PROPRIETOR,
FORTUNE SALES CORPORATION, TALIPARAMBA,
KANNUR DISTRICT.

BY ADVS.SRI.K.R.AVINASH (KUNNATH)
SRI.ABDUL RAOOF PALLIPATH

RESPONDENT(S)/ACCUSED AND STATE:

1. K.NANDAKUMAR,
S/O.K.M.BALAN NAMBIAR, PROPRIETOR,
LOGOS ELECTRO SYSTEM, KALANJERY HOUSE, TEMPLE GATE,
THIRUVANGAD, THALASSERY, KANNUR DISTRICT.

2. THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.

R1 BY ADV. SRI.CIBI THOMAS
R BY PUBLIC PROSECUTOR SMT.P.MAYA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl.Appeal No. 10 of 2015

Dated this the 17th day of July, 2015

JUDGMENT

The appellant challenges the order dated 12/11/2014 by which his complaint laid under Section 138 of the Negotiable Instruments Act was dismissed under Section 204 Cr.P.C.

2. Heard both sides.

3. According to the appellant/complainant, a complaint was preferred by him before the learned Magistrate alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act. The amount of Rs.1,70,336/- involved was covered by two cheques. The case stood posted to 12/11/2014, on which day, the complainant was absent and there was no representation for him. It appears that, in spite of earlier repeated directions, batta for issuing summons to the accused had also not been remitted. Consequently, the complaint was dismissed under Section 204 Cr.P.C.

4. It is true that there appears to be some laches on the part of the complainant. Not only that the complainant was absent, but there was no representation for him. It is true that his presence was not essential, since the case was posted for taking steps only. The impugned order also shows that in spite of repeated request, the batta

was also not paid. In the above circumstances, the learned Magistrate was well within its jurisdiction to pass the impugned order. However, it would have been more expedient, had the Magistrate given one more opportunity to the complainant, considering the huge amount involved in the case.

5. Considering the above fact, I feel that interest of justice demands that the matter is remanded to the court below to enable both sides to contest the case on merits.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remitted back to the court below to enable both sides to contest the case on merit. Both sides shall appear before the court below on 18/8/2015. Since the accused has appeared before this court, no separate summons will be issued. The court shall record their presence and thereafter proceed in accordance with law.

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge

