

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

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

CRL.A.No. 203 of 2015 (A)

AGAINST THE ORDER IN STC 1996/2012 of JUDICIAL FIRST CLASS MAGISTRATE,
KUTHUPARAMBA DATED 01-11-2014

AGAINST THE ORDER IN CrI.L.P. 62/2015 of HIGH COURT OF KERALA
DATED 18-02-2015

APPELLANT/COMPLAINANT:

SREE GOKULAM CHIT & FINANCE CO. (P) LTD
PERAVOOR BRANCH
REP. BY ITS ASSISTANT MANAGER & POWER OF ATTORNEY HOLDER
K.P.RAJESH, S/O RADHAKRISHNAN, AGED 42 YEARS PERAVOOR BRANCH
CITY CENTRE, KOTTIYOOR TEMPLE ROAD, PERAVOOR
KANNUR-670673.

BY ADV. SRI.MAHESH V RAMAKRISHNAN

RESPONDENTS/ACCUSED AND STATE:

1. MOHANAN K., AGED 40 YEARS
S/O KUNHIKANNAN NAMBIAR, BUSINESS
PARAKADIPARAMEL HOUSE, P.O. KAKKAYANGAD, KANNUR-670673

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

BY PUBLIC PROSECUTOR: SRI ABHIJITH LESLIE

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

SUNIL THOMAS, J.

=====

Crl.A.No.203 of 2015

=====

Dated this the 26th day of October, 2015

JUDGMENT

The appellant filed a complaint under Section 138 of the Negotiable Instruments Act on the strength of a cheque for a sum of Rs.8745/-. The case was posted for evidence to 01.11.2014 after the appearance of the accused. Admittedly, it was posted as last chance for recording evidence. However on that day, the complainant was absent. The Court on a reasoning that several chances were given in spite of which evidence was not tendered and the complainant not personally present, the complaint was dismissed.

2. Notice was served on the first respondent but has not appeared. Examined the records.

3. It appears that the complaint was filed on 13.04.2012 and thereafter, the presence of the accused could be procured only on 07.10.2014, that too, after coercive steps were taken. The case was thereafter posted on two occasions for evidence. Admittedly, the complainant was not ready when the case was posted as last chance. In the above circumstance, the Court was perfectly well within its jurisdiction to pass appropriate order.

4. However, it has to be noted that though the amount involved is not substantial, the complaint was pending before the court below since 2012, till it was ultimately dismissed in November 2014. Evidently, the complainant was diligently prosecuting the matter atleast for two years. It is also on record that the complainant, though absent, was effectively represented. Having regard to these facts, it would have been more proper, had the court below granted one more opportunity to the complainant to tender evidence. In the above circumstance, I feel that the impugned order is liable to be set aside and the matter remanded to the court below to enable the complainant to tender evidence.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remanded to the court below for fresh consideration after giving a reasonable opportunity to the complainant to tender evidence. It is made clear that both sides shall appear before the court below on 08.12.2015. In the event of the accused remaining absent on that day, court below shall issue fresh summons to the accused to procure his presence.

Sd/-

SUNIL THOMAS
Judge

Sbna

True Copy /

P.A to Judge