

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

CRL.A.No. 292 of 2015 ()

AGAINST THE JUDGMENT IN ST 257/2012 of J.M.F.C.-IV, KOLLAM DATED
24-12-2014

AGAINST THE ORDER IN L.P.NO.90/2015 OF HIGH COURT OF KERALA, DATED
06.03.2015

APPELLANT(S)/COMPLAINANT:

S.SIYAD
KETTIDATHIL VEEDU, UMayANALLOOR P.O,
KOLLAM

BY ADVS.SRI.PRATHEESH.P
SMT.S.SEETHA

RESPONDENT(S)/ACCUSED/STATE:

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

2. B.RAJAN
IDAYILA VEEDU(PULIVILA), NEAR INDUSTRIAL ESTATE,
UMAYANALLOOR P.O, KOLLAM

R1 BY PUBLIC PROSECUTOR SMT.M.G.LISHA

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
12-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 292 of 2015

Dated this the 12th day of October, 2015

J U D G M E N T

The appeal is against the judgment in S.T. No.257/2012 dated 24.12.2014. The complaint was filed by the complainant under Section 138 of the Negotiable Instruments Act, on the strength of a cheque for a sum of ₹1,75,000/-. The case was posted after few postings to 13.10.2014. On that day, the complainant sought an adjournment and it was adjourned to 24.11.2014, for evidence. On that day, there was no sitting. The next posting day was on 24.12.2014, on which day, the complainant and his counsel were absent. Consequently, by the impugned order, the learned Magistrate dismissed the complaint and acquitted the accused under Section 256 of the Cr.P.C. This is challenged in this appeal.

2. Notice on admission was issued to the 2nd respondent, who has been served though no appearance is marked. Heard the learned counsel for the appellant and examined the records.

3. Considering the fact that, the case was posted for evidence and the accused and the complainant were absent, the learned Magistrate was legally justified in passing any appropriate

order. However, having regard to the fact that, the matter has been pending since 2012 and the available records indicate that the complainant had been prosecuting the matter, it would have been more just and proper had one more opportunity been granted to the complainant. Of course, the counsel was also absent on that day. The reason stated for that was that there was a mistake in noting the next posting date.

4. Having considered the entire facts, I feel that, the impugned order be set aside and the complainant can be given one more last opportunity to prosecute his matter on merits.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remanded back to the Court below for a fresh consideration. Both sides shall appear before the Court below on 01.12.2015. If the accused does not mark his appearance on that day, the Court below shall issue fresh summons to the accused and thereafter proceed in accordance with law.

Sd/-
SUNIL THOMAS, JUDGE.
/true copy/

P. A. to Judge

Pn