

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

CRL.A.No. 529 of 2015 () IN CrL.L.P..114/2015

AGAINST THE ORDER IN ST 2589/2013 of J.M.F.C.-1,RANNI DATED 04-02-2015

AGAINST THE ORDER IN CrL.L.P. 114/2015 of HIGH COURT OF KERALA DATED 31-03-2015

APPELLANT(S)/COMPLAINANT:-:

KERALA STATE HOUSING FINANCE LTD.,
REPRESENTED BY ITS VADASSERIKARA BRANCH, MANAGER
PARTHASARATHY, POTHYIL USHA, EDAYARANMULA
PATHANAMTHITTA DISTRICT.

BY ADVS.SRI.A.JAYASANKAR
SRI.C.V.MANUVILSAN
SRI.MANU GOVIND

RESPONDENTS/ACCUSED/STATE:-:

1. T.R.VIJAYAN
THAMARASSERIL HOUSE, SEETHATHODU, RANNI TALUK
PATHANAMTHITTA DISTRICT - 689 672.

2. STATE OF KERALA
REPRESENTED THROUGH THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA AT ERNAKULAM - 682 031.

R2 BY PUBLIC PROSECUTOR SRI.ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
09-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 529 of 2015

Dated this the 9th day of December, 2015

J U D G M E N T

The appellant was the complainant in a proceeding under Section 138 of the Negotiable Instruments Act on the strength of a dishonoured cheque for a sum of ₹1,77,785/-. The accused appeared after lengthy proceedings and ultimately the case stood posted to 04.02.2013 for evidence. On that day, both the complainant and his counsel were absent. The Court below holding that despite repeated opportunities the complainant failed to turn up, invoked Section 256(1) Cr.P.C. and acquitted the accused. This is challenged by the complainant in this proceedings.

2. Notice was served on the 1st respondent who has not appeared to contest the proceedings. Heard and examined the records.

3. Admittedly, the complainant was absent on the date on which the accused was acquitted. The reason offered by the complainant is that while the complainant and his counsel were travelling in a vehicle, it got held up on the way due to traffic block. The counsel explained that both were proceeding from Pathanamthitta to Ranny. I am inclined to believe this version,

firstly for the reason that on the same day of acquittal, the copy application is seen filed and secondly for the reason that this claim of the complainant remains uncontroverted, in the absence of the accused. It cannot further be expected that after having filed a complaint on the basis of a cheque for a substantial amount and after having prosecuted it atleast for two years, it cannot easily be presumed that the complainant would remain negligent and voluntarily invite an adverse order of dismissal. Hence I am inclined to grant one more opportunity to the complainant after setting aside the impugned order.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remitted to the Court below for enabling the complainant to prosecute his matter. Both sides shall appear before the Court below on 22.01.2016. On that day, the complainant shall be present and offer himself for evidence. If the accused/1st respondent remains absent, the Court below shall issue fresh summons to procure his presence.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge