

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

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

CRL.A.No. 2458 of 2006 ()

**AGAINST THE JUDGMENT IN CC 12/2005 OF JUDICIAL FIRST CLASS MAGISTRATE -II
(MOBILE),KOTTAYAM**

APPELLANT(S)/COMPLAINANT:

**RANI SAJI,
PALLATHU HOUSE, AIMKOMPU KARA, VELLILAPALLY VILLAGE.**

**BY ADVS.SRI.P.M.KUNJIMOIDEENKUTTY
SRI.P.A.MOHAMMED ASHROF
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN**

RESPONDENT(S)/ACCUSED:

**1. MOHAN MATHEW,
MAZHUVANNUR HOUSE, BHARANANGANAM P.O., PALA.**

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

**R1 BY ADV. SRI.M.J.THOMAS
R2 BY PUBLIC PROSECUTOR SRI. C.K. JAYAKUMAR**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 12-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 2458 of 2006

Dated this the 12th day of October, 2015

J U D G M E N T

Aggrieved by the order dated 14.06.2006 in C.C.12/2005 of the Judicial First Class Magistrate Court-II (Mobile), Kottayam, whereby, the court below acquitted the accused under Section 256(1) of Cr.P.C., the complainant before the court below has come up in appeal.

2. The facts absolutely necessary for the disposal of this appeal are as follows:

According to the appellant, in order to discharge the debt due to him, the accused issued a cheque of ₹1,30,000/- dated 22.1.2004. The cheque on presentation bounced for want of funds in the account of the accused. A statutory notice issued was received by the accused which did not invoke any reply or response. Since the amount remained unpaid, a complaint was laid.

3. It is pointed out that cognizance of the offence was taken out by the Chief Judicial Magistrate Court, Kottayam as S.T.No.494/2004. After following the necessary procedures, summons was issued to the accused on 27.07.2004. The accused entered appearance and enlarged on bail. The appellant points out that on 26.05.2005, she had filed the proof affidavit.

4. Later on, the case was transferred to Judicial First Class Magistrate Court-II (Mobile), Kottayam and the case was numbered as C.C.No.12/2005. According to the appellant, the mobile court was functioning very seldom and the usual practice was to adjourn the case on notification. The case stood posted by notification on 21.03.2006. By an inadvertent mistake, the clerk of the appellant's counsel noted the date as 16.06.2006. After the summer vacation in 2006, the court resumed the sitting and the case was called on 31.05.2006. The appellant, under the bonafide impression that the case stood posted to 16.06.2006, did not

go to the court on 31.05.2006. The case was then posted to 03.06.2006 and on that day also the complainant could not be present. It was again adjourned to 14.06.2006. On that day also the appellant did not appear. Hence, the court concerned dismissed the complaint for non representation.

5. The learned counsel for the appellant contended that the omission to appear before the court on three occasions was not deliberate and the absence was due to the reason beyond the control of the appellant. The appellant was under the bonafide impression that the case was posted to 16.06.2006 and acted accordingly. The learned counsel for the appellant pointed out that unless the matter is heard on merits, she will be put to irreparable loss and injury.

6. After having considered the facts and circumstances of the case, even though the explanation offered by the appellant does not appear to be very convincing, the fact remains that matter has been disposed

of on technical grounds. The appellant alleged that a cheque of ₹1,30,000/- was in fact given by the accused and it was bounced on presentation. Therefore, it is only just and proper that the matter be considered on merits in accordance with law.

7. For the above reasons, this appeal is allowed. The impugned order is set aside. The matter is remanded to the trial court for disposal in accordance with law and in the light of what has been stated above.

The parties shall appear before the court below on **04.11.2015**. The court below shall make every endeavour to dispose of the matter as expeditiously as possible.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge