

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

CRL.A.No. 2026 of 2009 ()

AGAINST THE ORDER IN ST 690/2008 of JUDICIAL FIRST CLASS
MAGISTRATE, ADIMALY DATED 24-08-2009

PETITIONER/COMPLAINANT:

SAJI K.MATHEW, S/O. P.J.MATHEW,
PAPPADIYIL HOUSE, ADIMALY.

BY ADV. SRI.JOY C. PAUL

RESPONDENTS/ACCUSED & STATE:

1. K.J.THOMAS, KALAPPURACKAL HOUSE,
POTTASSERY P.O., MANTONY, MANNARKKADU
PALAKKAD.

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

R2 BY PUBLIC PROSECUTOR: SMT S HYMA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.Appeal.No.2026 of 2009
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Dated this the 02nd day of September, 2015

JUDGMENT

The appellant challenges the order of the Judicial First Class Magistrate, Adimaly in S.T.No.690 of 2008 dated 24.08.2009.

2. The petitioner herein, as the complainant filed a complaint under Section 138 of the Negotiable Instruments Act alleging that the accused had executed and delivered a cheque for a sum of Rs.90,000/-, which on presentation was returned dishonoured. The complaint was taken on file by the learned magistrate and after few postings, by the impugned order acquitted the accused on the ground that on that day, the complainant was absent and that there was no representation.

3. Heard the learned counsel for the appellant. Though the first respondent was served, he remained absent.

4. The complaint was filed on 03.09.2008. On that day, complainant was present and on the basis of his affidavit, the complaint was taken on file and summons issued. It appears that there were five postings thereafter. On two of the posting dates,

complainant was absent and it appears that there was sufficient representation on his behalf. Thereafter, on 29.05.2009, though the complainant was absent, NBW was issued to the accused. On subsequent two postings, complainant was absent. It is not clear as to whether he was represented or not. In the absence of anything in the proceeding to the contra, it can reasonably be presumed that he was being represented by the counsel.

5. Considering the fact that on all postings after the initial date of filing, the complainant was absent and since it appears that there was no representation on 24.08.2009, learned magistrate was well within his jurisdiction to pass appropriate orders as he deemed fit and proper. However, the complainant has a case that on that day, his lawyer was present but, he could not make an effective representation when the case was called, due to inadvertent omission from his part. It cannot reasonably be expected that a party, who initiates a legal proceeding, nor his counsel would voluntarily remain lethargic and invite an adverse order. In this background, it would have been more appropriate, had the learned magistrate granted one more opportunity to the appellant to prosecute his case. In the above circumstances, I feel that the impugned order is liable to be interfered with.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remanded back to the court below. Court below shall take back the complaint on file and after giving a reasonable opportunity to the complainant to take appropriate steps, proceed in accordance with law. The complainant shall appear before the court below on 08.10.2015.

Sd/-

SUNIL THOMAS
Judge

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