

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

CRL.A.No. 624 of 2015 () IN CrL.L.P..181/2015

AGAINST THE ORDER IN CC 340/2014 of J.M.F.C., KAYAMKULAM DATED
28-03-2015

AGAINST THE ORDER IN CrL.L.P. 181/2015 of HIGH COURT OF KERALA DATED
03-06-2015

APPELLANT(S)/COMPLAINANT:-:

SREE GOKULAM CHIT & FINANCE CO. (P) LTD.
HEAD OFFICE AT SREE GOKULAM TOWER, NO.66 (O.NO.356),
ARCOT ROAD, CHENNAI -600 024
REPRESENTED BY ITS AUTHORISED REPRESENTATIVE AGENT:
VIJAYA KUMAR
S/O.KRISHNAN NAIR
WORKING AS LEGAL CLERK IN THE BRANCH OFFICE
BROTHER'S BUILDING, BANK ROAD, KAYAMKULAM
KOLLAM - 690 502.

BY ADV. SRI.MAHESH V RAMAKRISHNAN

RESPONDENT(S)/RESPONDENTS/ACCUSED & STATE:-:

1. SABU P.H.,
S/O.HASSAN BAVA RAWTHER, THONDAPPURATHU KIZHAKKATHIL
PULLIKKANAKKU P.O., KAYAMKULAM, KOLLAM - 690502.

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

R2 BY PUBLIC PROSECUTOR SMT.M.G.LISHA

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

SUNIL THOMAS, J.

Crl. Appeal No. 624 of 2015

Dated this the 10th day of December, 2015

J U D G M E N T

The appellant is the complainant in C.C. No.340/2014 of the Judicial First Class Magistrate Court, Kayamulam in which he invoked Section 138 of the Negotiable Instruments Act against the accused. It was based on a dishonoured cheque for a sum of ₹74,450/-. The case stood posted to 28.03.2015, on which day, the complainant and his counsel were absent. The accused was represented. Hence the learned Magistrate, invoked Section 256 Cr.P.C. and acquitted the accused. This is under challenge in this appeal.

2. Though notice was served on the 1st respondent accused, he did not appear to contest the proceedings. Since the matter can be decided on the basis of the available materials, records are not awaited.

3. It is an admitted fact that the complainant was absent on 28.03.2015 on which day the case stood posted. There was no representation also. However, the learned counsel referring to paragraph 4 of his appeal memorandum submitted that, due to

an inadvertent mistake on the part of the counsel he did not make a representation. It appears that the complaint was filed on 12.02.2014 and after taking cognizance, summons was issued to the accused. He appeared before the trial Court and took bail on 17.01.2015. The case was adjourned to 28.03.2015. On a belief that it was only formally posted on that day, the complainant remained absent. The claims of the complainant which is projected as the reason for the absence of the complainant and his counsel, is not controverted by the accused, since he remained absent.

4. Considering the fact that a substantial amount is involved, that the complainant was prosecuting the matter from 12.02.2014 onwards, it can only be presumed that the posting on 28.03.2014 could have been only a formal posting. There is nothing on record to show that the presence of the accused was essential on that day. It appears that the learned Magistrate had not taken note of this fact, especially the fact that the accused had taken bail only on the previous posting date.

5. Having regard to the these facts, I feel that the appellant is entitled for one more opportunity to prosecute his

matter. Hence the impugned order is liable to be set aside.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remitted to the Court below to enable the complainant to prosecute the matter. Both sides shall appear before the Court below on 23.01.2016. If the accused remains absent on that day, the Court below shall issue fresh summons to procure his presence.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn