

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

CRL.A.No. 213 of 2013 ()

AGAINST THE ORDER IN CrI.L.P. 33/2013 of HIGH COURT OF KERALA DATED
16.01.2013

AGAINST THE ORDER IN CC 36/2011 of JUDICIAL FIRST CLASS
MAGISTRATE, PARAPPANANGADI DATED 01.12.2012

APPELLANT/COMPLAINANT:

POONADATHIL SRINIVASAN,
S/O APPUKKUTTAN, THEKKETHODI HOUSE, VELIMUKKU P.O.
MALAPPURAM, PIN:676 317.

BY ADV. SRI.E.NARAYANAN

RESPONDENTS/ACCUSED AND STATE:

1. PARAKKAL JOSHI,
S/O VELAYUDHAN, PARAKKAL HOUSE, ARIYALLUR
KODAKKAD P.O., MALAPPURAM, PIN:676 319.

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

R1 BY ADV. SRI.K.P.SUDHEER

R1 BY ADV. SRI.ARUN MATHEW VADAKKAN

R2 BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.213 of 2013
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Dated this the 4th day of December, 2015

JUDGMENT

The appellant as the complainant laid a complaint under Section 138 of the Negotiable Instruments Act against the first respondent/accused herein on the strength of a dishonoured cheque for a sum of Rs.2,00,000/-. The case was taken up by the court below on 01.12.2012. The complainant was absent but his counsel was present. The court below, holding that the complainant was continuously absent and he seemed to be reluctant to continue with the case, dismissed the complaint for default invoking Section 256(1) of Cr.P.C. This is assailed by the appellant in this appeal.

2. Heard both sides and examined the records.

3. Annexure-A1 indicates that while the matter was pending before the court below, the parties settled the dispute in Lok Adalath on a payment of Rs.1,50,000/-. It was agreed by the accused that the amount would be paid in three equal installments of Rs.50,000/- each. There was a clause that if any default was made, the case will be returned to the regular Court for trial. The

last date for payment of the installment was 31.10.2012. Evidently, the matter came up thereafter before the court below on 01.12.2012, since the accused did not comply with the terms of the agreement.

4. It is an admitted fact that the complainant was absent on that day. Even though there was no specific reason attributed for his absence on that day, but he was effectively represented by the counsel. The finding of the court below that the complainant seems to be reluctant to continue with the case is not sustainable as evident from the admitted facts even. The complainant had gone to the Lok Adalat initially for settlement of the case even for a lesser amount and awaited for the three installments to be made. Having regard to these facts, it cannot be said that the appellant was reluctant to proceed with the case and that, he was not interested in prosecuting the matter. It is also to be noted that the case is of 2011 and hence not very old to be taken up for evidence. Having regard to these facts and circumstances, I feel that the court below was not justified in dismissing the complaint invoking Section 256(1) of the Cr.P.C. 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 remanded to the court below to enable both parties to proceed with the case. Both sides shall appear before the court below on 16.01.2016.

Sd/-
SUNIL THOMAS
Judge

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True Copy /

P.A to Judge