

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

CRL.A.No. 776 of 2015 () IN Cr1.L.P..217/2015

AGAINST THE ORDER IN CC 286/2012 of JUDICIAL FIRST CLASS MAGISTRATE
COURT, PARAVOOR DATED 31-01-2015

AGAINST THE ORDER/JUDGMENT IN Cr1.L.P. 217/2015 of HIGH COURT OF KERALA
DATED 15-07-2015

APPELLANT/COMPLAINANT:

AMBIKA @ AMBIKA PRATHAP
V N LAND, NEDUNGOLAM, PARAVUR
KOLLAM DISTRICT, PIN 691301

BY ADVS.SRI.C.RAJENDRAN
SRI.K.R.RANJITH

RESPONDENTS/STATE/ACCUSED:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682031

2. JANARDHANAN
AMBALAMUTTAM, KOTTAPURAM, KOLLAM - 691001

R2 BY ADV. SRI.V.VENUGOPALAN NAIR
R1 BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.776 of 2015
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Dated this the 28th day of October, 2015

JUDGMENT

The appellant is the complainant in a proceeding under Section 138 of the Negotiable Instruments Act. After the appearance of the accused, the case was posted for evidence to 31.01.2015. On that day, the accused was absent but the complainant was represented. On the ground that the complainant was not ready for giving evidence and that the matter has been pending since 2012, court below acquitted the accused invoking Section 256(1) of the Cr.P.C. This is under challenge in this appeal.

2. When the matter was came up in the petition list, it was found that the matter itself can be disposed of on the basis of the admitted facts. Heard both sides.

3. It is an admitted fact that the complainant was absent on that day, but he was represented. Learned counsel for the appellant relying on paragraph 4 of the appeal memorandum submitted that the complainant was laid up with back pain and in fact, an application was made for adjournment. In spite of that, court below rejected it and acquitted the accused. Evidently, the impugned order shows that the matter has been pending for

evidence since 2012. It may not be correct to say that the case was pending for evidence since 2012, since admittedly the case was filed in 2012.

4. Having regard to the fact that till the date of the impugned order, the complainant had been prosecuting the matter diligently and she was represented on that day, I am inclined to grant one more opportunity to the complainant to adduce evidence and to prosecute the case.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remanded to the court below to enable the complainant to prosecute the case. Both sides shall appear before the court below on 11.12.2015.

Sd/-
SUNIL THOMAS
Judge

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P.A to Judge