

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

CRL.A.No. 244 of 2013 (A)

AGAINST THE ORDER IN Cr1.L.P. 39/2013 of HIGH COURT OF KERALA
DATED 04-02-2013

AGAINST THE ORDER IN CC 819/2009 of JUDICIAL FIRST CLASS MAGISTRATE-I,
CHALAKUDY DATED 18.12.2010

APPELLANT/COMPLAINANT:

NARAYANAN NAMBOODIRI AGED 41 YEARS
S/o.PARAMESWARAN NAMBOODIRI,
THANNIYIL MATHIYATH MANA
PUTHENCHIRA

BY ADV. SRI.RAJESH CHAKYAT

RESPONDENTS/ACCUSED:

1. PYLIKEN SREECHAKRA FINANCE & CHITS PVT LTD
REPRESENTED BY CHAIRMAN, VARDHAN
PULIKKAL HOUSE, MANIYAMKAVU
PUTHENCHIRA 680 524
2. VARDHAN, AGED 40 YEARS, PULIKKAL HOUSE
MANIYAMKAVU, PUTHENCHIRA 680 524.
3. STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA

BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.244 of 2013

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Dated this the 30th day of October, 2015

JUDGMENT

The appellant is the complainant in C.C.No.819 of 2009 for offence punishable under Section 138 of the Negotiable Instruments Act on the strength of a dishonoured cheque. After the appearance of the accused, the case was being adjourned and ultimately posted to 18.12.2010. On that day, the complainant and the accused were also absent. On a reasoning that in spite of repeated directions to be present in Court, appellant has not appeared, court below acquitted the accused under Section 256(1) of the Cr.P.C. This is assailed in this appeal.

2. Respondents/accused, though served, have not appeared. Heard the learned counsel for the appellant since the appeal can be disposed of on the basis of the admitted facts itself.

3. The only reason stated by the learned counsel for the appellant for his absence on the date of posting is that he being engaged in his avocation as poojari in a temple at Kakkanad, he could not go to Chalakkudy to attend the case. Though, I am not fully convinced about this reason, it is pertinent to note that even

on the date of acquittal, he was represented though he was expected to remain present for leading the evidence. The accused was also absent on that day. However, considering the entire facts, I feel that one more opportunity can be granted to the appellant to adduce his evidence. Hence, the impugned order is liable to be set aside and be remanded to the court below for enabling the complainant to prosecute his case.

In the result, the appeal is allowed. Impugned order is set aside and the matter is remanded to the court below for fresh consideration after giving a reasonable opportunity to the complainant to tender his evidence. Both sides shall appear before the court below on 17.12.2015. In the event of accused remaining absent, court below shall issue summons to the accused to ensure their presence.

Sd/-
SUNIL THOMAS
Judge

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