

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

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

CRL.A.No. 2318 of 2007

AGAINST THE ORDER IN CC 385/2006 of J.M.F.C.-II, (ADDL. MUNSIFF)
KASARAGOD.

APPELLANT(S):

K. RADHAKRISHNA SHETTY,
S/O. UGGAPPA SHETTY, K.U. SHETTY COMPOUND,
NEYAKAS ROAD, KASARAGOD.

BY ADV. SRI.T.B.SHAJIMON

RESPONDENT(S):

1. GANESH SOMAYAJI,
MANAGING PARTNER, SOMAYAJI ELECTRONICS,
COLLECTOR'S GATE, POST MANGALORE,
DAKSHINA KANNADA,
KARNATAKA.

2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

R1 BY ADV. SRI.DENIZEN KOMATH
BY ADV. SRI.SHERRY J. THOMAS
R2 BY PUBLIC PROSECUTOR SMT. LILLY LESLIE.

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

P. BHAVADASAN, J.

Crl.Appeal. No. 2318 of 2007

Dated this the 10th day of December, 2015.

JUDGMENT

The accused in a complaint filed under Section 138 of the Negotiable Instruments Act was acquitted on the ground that the complainant did not appear after the issuance of notice for his appearance for cross examination. Resultantly invoking Section 256 of Cr.P.C., the accused was acquitted.

2. The facts absolutely necessary for the disposal of this appeal are as follows:

Alleging that the accused had borrowed a sum of Rs.5,00,000/- from the complainant, for discharge of which a cheque was issued which on presentation bounced for want of funds, and the statutory notice invoked no response, the complaint was laid.

3. A reading of the order shows that after following the necessary procedures, summons was issued to the

accused, who entered appearance. He pleaded not guilty and the particulars of the offence were read out to him and the complainant had filed his affidavit in chief and Exts. P1 to P6 were marked on 23.5.2007. Then the case was adjourned to 19.6.2007. 11.7.2007, 1.8.2007 and to 24.9.2007. On all those days the complainant was absent though his counsel was present. Finally on 24.9.2007 since the complainant was again absent inspite of repeated postings, the court invoked Section 256(1) of Cr.P.C. and acquitted the accused.

4. Learned counsel appearing for the appellant contended that the omission to appear on 24.9.2007 was not deliberate and his counsel had represented his inability to appear on that day. It was not as if the case was unrepresented. The complainant's lawyer was present and he did seek an adjournment. In the facts and circumstances of the case, the complainant ought to have been given an opportunity and it was not proper on the part of the court to

acquit the accused under Section 256(1) of Cr.P.C.

5. There may be some substance in the complaint of the appellant. However, the court below cannot be found fault with in the strict sense, for, as many as six postings were given to the complainant to be present for cross-examination and on those days he was not present. But the significant aspect is that his counsel was present and represented on his behalf. Finally the case came up on 24.9.2007 on which day also he was absent. Here, one has to notice that his counsel was present and adjournment motion was made. Since several adjournments have been given, the court below felt that it was a delaying tactics adopted by the complainant and acquitted the accused. There is one aspect. By doing so, the right of the complainant is affected. Even though it could not be said that he was not at fault, the court should not be so harsh. It is only proper that he would be given an opportunity to present his case so as to see that justice should be done to

both the parties.

For the above reasons, this appeal is allowed, the order of the court below is set aside and the Judicial Magistrate of First Class II, Kasaragode is directed to take back C.C. 385 of 2006 on file and proceed with the matter in accordance with law. Parties shall appear before the court below on 14.1.2016. The court below shall make every endeavour to dispose of the case as expeditiously as possible.

P. BHAVADASAN,
JUDGE

sb.