

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

CRL.A.No. 928 of 2015 () IN Cr1.L.P..320/2015

AGAINST THE ORDER IN ST 33/2013 of JUDICIAL FIRST CLASS MAGISTRATE
COURT - II, ETTUMANOOR DATED 18-04-2013

AGAINST THE ORDER IN Cr1.L.P. 320/2015 of HIGH COURT OF KERALA DATED
22-09-2015

APPELLANT/COMPLAINANT:

M.J.REJIMON
S/O. JACOB, MALIYAKKAL HOUSE, PERUMPAIKKADU VILLAGE
GANDHINAGAR, KOTTAYAM DISTRICT-686008.

BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM
SMT.K.R.MONISHA

RESPONDENTS/STATE AND ACCUSED:

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

2. VENUGOPALAN NAIR,
S/O. RAMAKRISHNAN NAIR, VARAPPURATHU HOUSE
THIRUVANCHOOR KARA, MANARKADU-686019.

R2 BY ADV. SRI.V.K.SUNIL
BY PUBLIC PROSECUTOR: SMT. M.G.LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24-11-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.928 of 2015

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Dated this the 24th day of November, 2015

JUDGMENT

The appellant as the complainant laid a proceeding under Section 138 of the Negotiable Instruments Act, on the strength of a dishonoured cheque for a sum of Rs.1,00,000/-. The case was originally filed before the Judicial First Class Magistrate-I, Ettumanoor which, after several postings, was transferred to Judicial First Class Magistrate-II after 10.04.2013. On 18.04.2013, when the matter came up for hearing, the complainant was absent and hence, the court below by the impugned order acquitted the accused, invoking Section 256(1) of the Cr.P.C. This is under challenge in this appeal.

2. Heard both sides and examined the records. Learned counsel for the appellant has produced the certified copy of the proceedings before the court below since this would clinch the issue involved in this appeal. The records are not called for.

3. The proceedings before the court below shows that the case was filed in the year 2012 and it was pending before the Judicial First Class Magistrate-I till 2013 April. Thereafter, by an administrative order, it was transferred to the Judicial First Class Magistrate-II. There were two postings on 17.04.2013 and

18.04.2013. On both dates, appellant was absent. It appears that the accused was also absent. Learned counsel for the appellant, referring to ground No.E of the appeal memorandum, submitted that transfer of the case to the Judicial First Class Magistrate-II was not brought to the notice of the appellant and due to that inadvertent mistake, he could not appear on the subsequent posting date. This seems to be believable since the accused was also absent on that day. Learned magistrate ought to have taken into consideration that aspect also before invoking Section 256(1) of Cr.P.C.

4. Having regard to the above facts, I feel that it could not be presumed that appellant would remain lethargic and invite a dismissal of his order. In the light of the above, the impugned order is not legally sustainable and 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 the complainant to prosecute the complaint. Both sides shall appear before the court below on 01.01.2016.

Sd/-
SUNIL THOMAS
Judge

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True Copy /

P.A to Judge