

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

CRL.A.No. 943 of 2015 () IN CrL.L.P..300/2015

AGAINST THE ORDER IN ST 352/2013 of J.M.F.C., THALASSERY DATED
29-05-2015

AGAINST THE ORDER IN CrL.L.P. 300/2015 of HIGH COURT OF KERALA DATED
15-09-2015

APPELLANT(S)/COMPLAINANT:

SREE GOKULAM CHIT AND FINANCE CO(P) LTD.
NO. 66, ARCOT ROAD, KODAMBAKAM
CHENNAI - 600 024
REP. BY ITS LEGAL CLERK OF ITS THALASSERY
BRANCH AND POWER OF ATTORNEY HOLDER
ASHALATHA C.K., THALASSERY, KANNUR.

BY ADV. SRI.MAHESH V RAMAKRISHNAN

RESPONDENT(S)/ACCUSED & STATE:

1. PRAJEESH E.T.K, AGED ABOUT 50 YEARS
S/O. BALAN, RESIDING AT CHAITHRAM, P.O.CHOKLI,
KANNUR - 670 672.

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

R1 BY ADV. SMT.K.LASITHA
R2 BY PUBLIC PROSECUTOR SRI.ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
16-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 943 of 2015

Dated this the 16th day of December, 2015

J U D G M E N T

This appeal is preferred by the defacto complainant in S.T. No.352/2013 of the Judicial First Class Magistrate Court, Thalassery. The appellant had laid a complaint before the Court below invoking Section 138 of the Negotiable Instruments Act, on the basis of a dishonoured cheque for a sum of ₹1,18,519/-. The case stood posted to 29.05.2015. On that day, the complainant and his counsel were absent. The Court below, noting that the case was posted as a last chance for evidence, acquitted the accused invoking Section 256(1) Cr.P.C. This is under challenge in this appeal.

2. Heard both sides and examined the records.

3. Admittedly, the case stood posted on 29.05.2015 for adducing evidence. According to the learned counsel, the case stood earlier posted to 24.04.2015. On that day, the affidavit in lieu of chief examination was filed. The authorised officer of the complainant was present. The case was not taken up on that day and adjourned to 18.05.2015. On that day also, the case was adjourned on the request of the learned counsel for the accused. Subsequently it was adjourned to 29.05.2015. On that day, the

authorised representative of the complainant was present in another court for tendering evidence and it was submitted that the matter may be taken up after sometime. According to the appellant, the Court below did not pass over the matter but acquitted the accused. Though there is no material to prove that the complainant was present in person on that day, it is not disputed that the proof affidavit had already been filed. The complaint was filed on 22.01.2013 and the matter was being pursued thereafter till the date of its dismissal on 29.05.2015. The amount involved is also substantial. In the light of the uncontroverted claim of the appellant that the witness was present on that day, I feel that one more opportunity is liable to be granted to the appellant to prosecute his matter.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remitted back to the court below to enable the complainant to prosecute his case. Both sides shall appear before the Court below on 29.01.2016. On that day, the complainant shall be present in person and shall offer for adducing evidence.

Sd/-
SUNIL THOMAS, JUDGE.
/true copy/

P. A. to Judge