

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

CRL.A.No. 980 of 2015 ()

AGAINST THE ORDER IN ST 255/2013 of CHIEF JUDICIAL MAGISTRATE, KOLLAM
DATED 13.05.2015

AGAINST THE ORDER IN Cr1.L.P. 266/2015 of HIGH COURT OF KERALA DATED
16-09-2015

APPELLANT/COMPLAINANT:

SREE GOKULAM CHITS AND FINANCE COMPANY PRIVATE LIMITED
HEAD OFFICE AT SREE GOKULAM TOWER NO.66, ARCOT ROAD
CHENNAI-600 024
REPRESENTED BY THE AUTHORIZED REPRESENTATIVE MR.RAMANAN
WORKING AS LEGAL CLERK IN THE DIVISIONAL OFFICE AT KOLLAM
NOW REPRESENTED BY IT'S LEGAL CLERK MR.P.PRAMOD.

BY ADV. SMT.A.SREEKALA

RESPONDENTS/ACCUSED AND STATE :

1. SHAJEER
S/O. SAINUDEEN, FATHIMUTHU MANZIL, THEJAS NAGAR-173
VADAKKEVILA P.O., KOLLAM-691 010.

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.

R1 BY ADV. SRI.B.N.HASKAR
R1 BY ADV. SRI.J.R.RAJEEV
R2 BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.980 of 2015
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Dated this the 13th day of November, 2015

JUDGMENT

The appellant/company instituted a complaint invoking Section 138 of the Negotiable Instruments Act on the strength of a cheque for a sum of Rs.1,26,000/- which was dishonoured. After the appearance of the accused, there were several postings thereafter. It appears that on the last but one posting date, neither there was representation nor the complainant was present. Hence, notice was issued to the counsel for the complainant. In spite of the above notice, the complainant did not turn up. Consequently, the accused was acquitted under Section 256(1) of the Cr.P.C. This is assailed in this appeal.

2. Notice was served on the first respondent who has not appeared to contest the proceeding. Heard and examined the records.

3. It is an admitted fact that the complainant was absent on 13.05.2015 and also on the previous posting date. According to the learned counsel for the appellant, though a notice of posting the case was served on the counsel, he failed to communicate it to the complainant and consequently, both were absent on that day. In the above circumstance, the Court, which had granted sufficient

opportunity to the complainant to prosecute the matter, cannot be found fault with and have given cogent reasons for acquitting the accused by a detailed order.

4. However, it is pertinent to note that the complaint was filed in the year 2013. The complainant had been prosecuting the matter till the date of its dismissal except for the last posting dates on which, complainant remained absent. Having regard to this fact and also the amount involved, I feel that one more opportunity can be granted to the complainant to prosecute the case. To enable this, the impugned order 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 give one more opportunity to the complainant to prosecute his case. Both sides shall appear before the court below on 22.12.2015. In the event of the accused remaining absent, the court below shall issue fresh summons to him to procure his presence, and thereafter proceed in accordance with law.

Sd/-

SUNIL THOMAS
Judge

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