

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

CRL.A.No. 1039 of 2015 () IN CrL.L.P..359/2015

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AGAINST THE ORDER IN ST 479/2011 of JUDICIAL FIRST CLASS MAGISTRATE  
COURT-II, PATHANAMTHITTA DATED 31.03.2015

AGAINST THE ORDER IN CrL.L.P. 359/2015 of HIGH COURT OF KERALA DATED  
13-10-2015

APPELLANT/COMPLAINANT:

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SALEENA SHAHUL  
W/O.SHAHUL HAMEED, SABEEL -PADIPPURATHUNDIL, KADAKKADU  
PANDALAM, PATHANAMTHITTA DISTRICT.

BY ADVS.SRI.S.SHANAVAS KHAN  
SMT.S.INDU

RESPONDENTS/ACCUSED/STATE:

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1. HARIKRISHNAN.V S/o.P.K.V NAIR  
VISYALI, IDAMALI, THATTA  
PATHANAMTHITTA DISTRICT.

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

R1 BY ADV. SRI.KRISHNADAS P.NAIR,  
R1 BY ADV. SMT.SREEKALA K.L.,  
R1 BY ADV. SRI.HARIDAS P.NAIR,  
R1 BY ADV. SRI.K.R.RAMESH  
BY PUBLIC PROSECUTOR: SRI ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01-12-2015, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**SUNIL THOMAS, J.**

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**Crl.A.No.1039 of 2015**

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Dated this the 01<sup>st</sup> day of December, 2015

**JUDGMENT**

The appellant had laid a complaint against the first respondent herein on the strength of a dishonoured cheque for a sum of Rs.35,000/-. The accused appeared and thereafter the case was posted to 31.03.2015. On that day, the appellant and his counsel were absent. Hence, the court below, noting the fact that on the previous posting dates the complainant remained absent, 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.

3. It is an admitted fact that the appellant and his counsel were absent on 31.03.2015. In fact, copy of the diary extract was also made available by the learned counsel for the appellant which shows that the appellant was absent on 06.03.2015, 26.03.2015 and also on 31.03.2015. On all the three days, the appellant and

his counsel were absent. Ms.S.Indu, learned counsel for the appellant, fairly conceded that it was due to an inadvertent error that the appellant remained absent. Learned counsel sought for granting an opportunity to prosecute the matter.

4. It is pertinent to note that the complaint was filed on 16.02.2011. Though, the amount is not substantial, the matter was being posted on several occasions for the preceding four years and on all the posting dates, either the complainant or his counsel was present. This eminently shows that the complainant was diligent in prosecuting the matter. It is also pertinent to note that all the three posting dates, on which the complainant and his counsel remained absent, were in the same month itself. It cannot straight away be presumed that the complainant, after filing the complaint, would voluntarily remain absent and invite a dismissal of his own complaint. Having regard to these facts, court below ought to have granted one more opportunity. Learned counsel for the appellant was hence justified in seeking one more opportunity to prosecute the matter. Impugned order is hence liable to be set aside.

In the result, the appeal is allowed. The impugned order is set aside. The matter is remanded to the court below for a fresh

consideration. Both sides shall appear before the court below on 11.01.2016. On that day, appellant shall present himself and be ready for tendering evidence.

Sd/-  
**SUNIL THOMAS**  
**Judge**

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True Copy /

P.A to Judge