

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.2556 of 2009

AGAINST THE JUDGMENT IN ST 2255/2008 of JUDICIAL FIRST CLASS
MAGISTRATE COURT-V, ERNAKULAM DATED 06-05-2009

APPELLANT/PETITIONER/COMPLAINANT:

MUTHOOT LEASING AND FINANCE LTD.,
PRESENTLY RENAMED AS MUTHOOT VEHICLES AND ASSETS
FINANCE LTD., MUTHOOT CHAMBERS, 2ND FLOOR,
KURIAN TOWERS, BANERJI ROAD,
ERNAKULAM, COCHIN-682018, REPRESENTED BY
ITS POWER OF ATTORNEY HOLDER MRS.BABY SUJATHA,
AGED 30 YEARS, D/O. M.R. VALSAN RESIDING AT SAI SOORAJ,
THAMARASSERY ROAD, POONITHURA P.O., THRIPIUNITHURA.

BY ADVS.SRI.G.KRISHNAKUMAR
SRI.M.MANOJ KUMAR MALLIA

RESPONDENTS/ACCUSED AND STATE:

1. ARUN KUMAR G.,
VIDYA NIWAS, MADAPPAT ROAD, MANJUMMEL P.O.,
ELOOR, UDYOGAMANDAL-683501.
2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM.

R1 BY ADVS. SRI.JOHN JOSEPH(ROY)
SRI.JEFRIN MANUEL

R2 BY SMT. LILLY LESLIE, PUBLIC PROSECUTOR

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.2556 OF 2009

Dated this the 10th day of December, 2015.

J U D G M E N T

Unfortunate is the position of the complainant in this case. In respect of a transaction the complainant had claimed that a cheque was issued to the complainant by the accused which, on presentation, bounced for want of funds and complaint was laid by the complainant under Section 138 of the Negotiable Instruments Act.

2. Cognizance of the offence was taken and after following necessary procedures, summons was issued to the accused. The accused entered appearance. In paragraph 5 of the memorandum of appeal, the sequence of events have been narrated by the complainant.

3. True, on two occasions, the complainant was absent. But the complainant had shown adequate reason for the non appearance and the court was impressed with the same and the case was adjourned and it was posted to 06.05.2009. On

that day, due to some urgent matters, the complainant could not appear and representation was made on behalf of the complainant to have the case posted on the very next day. Unfortunately, the court did not accede to the said request and acquitted the accused under Section 256 of the Code of Criminal Procedure.

4. It is very unkind as far as the complainant is concerned. It is not to say that the complainant can take things as they wish. On 06.05.2009, the prayer sought was to adjourn the case to next day. There is nothing to indicate that the complainant was interested in protracting the matter in one way or another. The court could have given one days' time for the complainant. It is felt that the complainant should be given an opportunity to vindicate her grievance.

In the result, this appeal is allowed. The impugned order is set aside and the matter is remanded to the trial court directing the trial court to restore ST No.2255/2008 back to file and dispose it of on merits after affording an opportunity to both parties to adduce evidence. The parties shall appear before the

trial court on 14.01.2016. If the case is no longer pending before the court where it was initially pending, fresh notice shall be issued to the parties informing where the matter is pending. The matter shall be disposed of by the trial court as expeditiously as possible.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

// True Copy //

P.A to Judge