

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. 1174 of 2015 () IN CrL.L.P..426/2015

AGAINST THE ORDER IN ST 4677/2012 of JUDICIAL FIRST CLASS MAGISTRATE
COURT - I, OTTAPPALAM DATED 28-12-2013

AGAINST THE ORDER IN CrL.L.P. 426/2015 of HIGH COURT OF KERALA DATED
13-11-2015

APPELLANT/COMPLAINANT:

SHINOJ
S/O.STALIN, KALARIKKAL VEED, ARAMKULAM AMSOM
MANISSERI DESOM, OTTAPALAM TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.P.JAYARAM

RESPONDENTS/ACCUSED AND STATE:

1. SANAL KUMAR
S/O.LATE SREEKUMARAN NAIR, CHONDATH HOUSE, THOTTAKKARA
OTTAPALAM TALUK, PALAKKAD DISTRICT, PIN-679102.

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

R1 BY ADV. SRI.K.B.ARUNKUMAR
R1 BY ADV. SRI.RANJIT BABU
BY PUBLIC PROSECUTOR: SMT. M.G.LISHA

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

SUNIL THOMAS, J.

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Crl.A.No.1174 of 2015

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Dated this the 24th day of November, 2015

JUDGMENT

The appellant is the complainant before the court below in S.T.No.4677 of 2012 alleging offences punishable under Sections 279 and 338 of the Indian Penal Code. After the appearance of the accused, there were few postings thereafter. Ultimately, the case stood posted to 01.10.2013 with a direction to the complainant to be present to tender evidence and thereafter, to 28.12.2013. On that day, complainant was absent, but the accused was also absent. On a reasoning that the complainant was continuously absent, the court below acquitted the accused. This is under challenge in this appeal.

2. When the matter came up for admission, the accused took notice on behalf of the first respondent. Heard both sides. Since a copy of the proceeding of the court below is also annexed and I feel that the matter can be disposed of on the basis of the admitted facts, records are not called for.

3. Evidently, accused had appeared and the case stood posted to 28.12.2013 as last chance. Even though the proceeding does not specifically disclose as to whether the complainant was

represented or not, it appears that he was in fact represented. In the appeal memorandum, a contention is set up that the complainant was laid up due to jaundice and hence, he could not appear on that day. However, no application was filed either. Considering the fact that the matter was of the year 2012 and till the date of acquittal of the accused, complainant has been diligently prosecuting the matter, I feel that the court below was not justified in acquitting the accused invoking Section 256(1) of Cr.P.C. I feel that one reasonable opportunity ought to have been granted to the complainant to pursue his matter. 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 tender the evidence and to prosecute his case as a last chance. Both sides shall appear before the court below on 30.12.2015. The court below shall thereafter proceed in accordance with law.

Sd/-
SUNIL THOMAS
Judge

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True Copy /

P.A to Judge