

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

CRL.A.No. 29 of 2012 ()

AGAINST THE ORDER IN CC 733/2010 of J.M.F.C.-II, KOCHI DATED
11.03.2011

APPELLANT(S) /COMPLAINANT:

ASWA CON,
INDISTRIAL DEVELOPMENT AREA, DOOR NO.2/69A, AROOR.P.O.
ALAPPUPZHA, KERALA PIN-688534, REP. BY ITS PROPRIETOR
V. AMARNATH.

BY ADV. SRI.P.SANJAY

RESPONDENT(S) /ACCUSED AND STATE:

1. P.A.PETER
PROPRIETOR, APM CONSTRUCTIONS, DOOR NO. 29/690/C
VRINDAVAN BUILDING, OPP. POWER HOUSE, SAHAKARANA ROAD
VYTILA, KOCHI - 682 019.

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

R1 BY ADVS. SRI.SHERRY J. THOMAS
SMT.K.S.LOVELY

R2 BY PUBLIC PROSECUTOR SRI.ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
07-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Pn

SUNIL THOMAS, J.

Crl. Appeal No. 29 of 2012

Dated this the 7th day of December, 2015

J U D G M E N T

The appellant, as the complainant instituted a proceeding under Section 138 of the Negotiable Instruments Act on the strength of a dishonoured cheque for a sum of ₹23,500/-.

2. After several postings, the case stood posted to 11.03.2011. On that day, the complainant and his counsel were absent. Holding that they were continuously absent, the accused was acquitted invoking Section 256(1) Cr.P.C. This is assailed in this appeal.

3. Notice was served on the 1st respondent who has appeared through a counsel. Heard. Since the appeal itself can be disposed of on the basis of the available materials, lower court records are not called for.

4. According to the learned counsel, the case was filed on 29.09.2009 before the Chief Judicial Magistrate Court, Ernakulam. Thereafter it was informed that the case will be transferred to Judicial First Class Magistrate Court, Kochi. On enquiry with the office of the Judicial First Class Magistrate Court, Kochi it was

informed that this case has not been included in the list of cases proposed to be transferred. Hence the counsel was not aware of the posting dates.

5. Admittedly, the case was transferred to the Judicial First Class Magistrate Court II, Kochi on 05.01.2010. Thereafter there were postings on 26.10.2010, 26.02.2011 and 08.03.2011. Only thereafter the Court below invoked Section 256(1) Cr.P.C.

6. The learned counsel vehemently contended that there was no wilful latches and that in spite of the earnest efforts of the counsel, the details of the transfer could not be obtained. However, I am not inclined to accept this contention completely, since the impugned order itself indicates that the accused was represented through a counsel. However, there is no dispute that the complaint was filed before the Chief Judicial Magistrate Court, Ernakulam and subsequently transferred to Judicial First Class Magistrate Court II, Kochi. Admittedly, the complaint was filed on 29.09.2009. Thereafter the matter was diligently and bonafidely prosecuted by the complainant. Having regard to this fact, I feel that one more opportunity can be granted to the petitioner to prosecute the matter, since it cannot easily be presumed that

after having prosecuted the matter from 2009 onwards, the complainant would voluntarily remain lethargic and invite an adverse order. Hence 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 remitted to the Court below to enable the complainant to prosecute the case. Both sides shall appear before the Court below on 20.01.2016.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn