

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. 105 of 2012 ()

AGAINST THE ORDER/JUDGMENT IN ST 5418/2008 of J.M.F.C.-III, TRIVANDRUM
DATED 10-10-2011

APPELLANT/COMPLAINANT:

BANK EMPLOYEES CO-OPERATIVE SOCIETY LTD.
SBT UNION BUILDING, PULIMOODU, THIRUVANANTHAPURAM
REPRESENTED BY ITS SECRETARY P.S.SEKHAR.

BY ADV. SRI.G.SUDHEER KARAKONAM

RESPONDENT(S)/ACCUSED & STATE:

1. G. KRISHNAN
SUJATHA NIVAS, TP 387, THYTHOTTAM
ARUMANOOR, POOVAR, THIRUVANANTHAPURAM - 695 651.

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

R2 BY PUBLIC PROSECUTOR SRI.ABHJITH 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. 105 of 2012

Dated this the 7th day of December, 2015

J U D G M E N T

The appellant is the complainant in S.T. No.548/2008 for offence punishable under Section 138 of the Negotiable Instruments Act on the strength of a dishonoured cheque for a sum of ₹56,084/-.

2. The case stood posted to 10.10.2011 for evidence. On that day, neither the complainant nor his counsel was present. Hence the Court below by the impugned order acquitted the accused invoking Section 256 Cr.P.C. This is under challenge in this appeal.

3. Notice was served on the 1st respondent, who did not appear to contest the proceedings. Heard. Since the matter can be disposed of on the basis of the available records itself, lower court records were not called for.

4. In the appeal memorandum, it is stated that the case originally stood posted to 17.04.2010, 26.05.2010 & 30.07.2010 and thereafter to 19.10.2011 for taking evidence. On all those dates the case was adjourned on notification since the Presiding

Officer was not available. Subsequently it was adjourned to 10.10.2011. On that day, the complainant was absent but he was represented by a counsel. However, the claim of the appellant that he was represented by the counsel, does not appear to be correct. The court below in the impugned order has specifically stated that the complainant was not present either in person or by the Pleader, which I am inclined to believe.

5. However, the claim that there were few other posting dates prior to the date of dismissal, remains uncontroverted, in the absence of the accused. The impugned order itself shows that the complaint was instituted on 09.06.2008. The complainant has been diligently prosecuting the matter thereafter, till it was dismissed on 10.10.2011. Having regard to this fact, I feel that it cannot be presumed that the complainant voluntarily remained absent and invited an adverse order. Hence I feel that the appellant is entitled for one more reasonable opportunity.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remanded to the Court below for proceeding in accordance with law after granting the appellant a

reasonable opportunity to tender evidence. Both sides shall appear before the Court below on 20.01.2016. If the accused remaining absent, the Court below shall issue fresh summons to procure his presence.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn