

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

CRL.A.No. 218 of 2012 ()

AGAINST THE ORDER IN Cr1.L.P. 302/2011 of HIGH COURT OF KERALA DATED
06-04-2011

AGAINST THE ORDER IN CC 176/2009 of JUDICIAL FIRST CLASS
MAGISTRATE-III, KOTTARAKAKARA DATED 17-01-2011

APPELLANT/COMPLAINANT:

MUTHOOT VEHICLE AND ASSET FINANCE LIMITED
MUTHOOT CHAMBERS, 2ND FLOOR, KURIAN TOWERS
BANERJI ROAD, ERNAKULAM, FORMERLY KNOWN AS
MUTHOOT LEASING AND FINANCE LIMITED REP. BY
ITS POWER OF ATTORNEY HOLDER, SMT.GEETHA G NAIR
AGED 28, W/o.ABILASH, ELAMCHERIYIL HOUSE
SANGAMAMLANE, PADIVATTOM, EDAPALLY
P O, ERNAKULAM

BY ADV. SRI.SABU S.KALLARAMOOLA

RESPONDENT/ACCUSED:

1. ANILKUMAR.P.
CHARUVILA MELATHIL VEEDU
KOTTATHALA P O, KOTTARAKKARA 691 506
2. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682031

R1 BY ADV. ADV. SHYAM J SAM

R2 BY PUBLIC PROSECUTOR: SMT LISHA M A

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.218 of 2012

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Dated this the 9th day of November, 2015

JUDGMENT

This appeal arises from the order dated 17.01.2011 by which the complaint filed under Section 138 of the Negotiable Instruments Act was dismissed on the ground that the complainant was absent and consequently, the accused was acquitted.

2. The case of the complainant was that after the complaint was filed through the power of attorney, the period of the power of attorney expired pending the proceedings. Hence, new power of attorney holder filed C.M.P.No.106 of 2010. It appears that C.M.P was filed at a time when the second power of attorney was alive, but as on the date of consideration of present C.M.P., the period of second power of attorney had also expired and hence, C.M.P. was dismissed. Thereafter, the case stood posted to 17.01.2011. On that day, it appears that C.M.P.No.12 of 2011 was filed seeking condoning the absence of the complainant, which was dismissed. Thereafter, by the impugned order on the same day, the Court held that no application was filed by the complainant to excuse absence, though the matter was posted for

evidence as a last chance. Consequently, the complaint was dismissed and accused was acquitted.

3. Certified copy of the order in C.M.P.No.12 of 2011 was made available by the learned counsel for the appellant at the time of hearing. It indicates that the complainant had filed an application to condone his absence. Whether the Court was justified in dismissing that application is a different issue. However, after dismissing that application, the Court proceeded to hold that the complainant, though represented, had not filed any application to condone the absence, which apparently appears to be improper. The complainant had been prosecuting the matter since 2008 when it was initially filed before the Judicial First Class Magistrate-I, Kottarakkara, till it reached its ultimate finality by the impugned order.

4. Heard. Notice served on the first respondent. No appearance.

5. The reasoning stated by the court below for dismissing C.M.P.106 of 2010 also appears to be not justifiable. The company constituted under the Companies Act can only function through its officials and at the time of filing CMP.No.106 of 2010, there was a petition with valid power of attorney in favour of the applicant in

that case.

6. In the light of the above, both the impugned orders passed on C.M.P.No.106 of 2010 and that dated 17.01.2011 are not legally sustainable and are liable to be set aside. To keep the records straight, complainant shall produce before the court below the power of attorney regarding the person who has been legally and properly authorized to prosecute the matter. Thereafter, the court below shall proceed with the trial of the matter after granting a reasonable opportunity to the complainant to adduce evidence.

In the result, the appeal is allowed. Impugned orders in C.C.No.176 of 2009 and that in C.M.P.No.106 of 2010 are set aside. The matter is remanded to the court below for enabling the complainant to produce document regarding the person legally authorized to represent the company and also to lead evidence. Both sides shall appear before the court below on 17.12.2015. In the event of the accused/first respondent herein remaining absent, the court below shall issue summons to him to procure his presence.

Sd/-
SUNIL THOMAS
Judge

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