

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

CRL.A.No. 1104 of 2013 (A)

AGAINST THE ORDER IN CC 1143/2009 of JUDICIAL FIRST CLASS
MAGISTRATE - IV, ERNAKULAM DATED 02-07-2010

AGAINST THE ORDER IN Cr1.L.P. 392/2013 of HIGH COURT OF KERALA DATED
26-06-2013

APPELLANT/COMPLAINANT:

R.P.REJILA
W/O.P.K.BALAN, AGED 52
CHITHIRA PALACE GARDENS, KARINGACHIRA
IRUMPANAM
THROUGH POWER OF ATTORNEY HOLDER P.K.BALAN, S/O CHOYIKKUTTY
AGED 62, CHITHIRA PALACE GARDENS, KARINGACHIRA
IRUMPANAM, ERNAKULAM DISTRICT.

BY ADVS.SRI.C.M.NAZAR
SRI.MANSOOR.B.H.

RESPONDENTS/ACCUSED AND STATE:

1. JOSE M. JOHN
MOOZHIL HOUSE, KANICHIRA, KUREEKADU P.O.
ERNAKULAM DISTRICT

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

R1 BY ADV. SRI.T.A.RAJAN
R2 BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.1104 of 2013

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Dated this the 30th day of October, 2015

JUDGMENT

The complainant in C.C.No.1143 of 2009 is the appellant. The case was laid on the strength of a dishonoured cheque for Rs.19,000/-. After several postings, the case stood posted on 02.07.2010 for evidence. On that day, complainant was absent, nor was he represented. The court below noticing that the complainant was absent continuously on the previous three posting dates, acquitted the accused invoking Section 256(1) of the Cr.P.C. This is challenged in this appeal.

2. Learned counsel for the appellant had raised a contention that no notice was served on the appellant for transfer of the case from the Additional Chief Judicial Magistrate Court, Ernakulam to Judicial First Class Magistrate Court-IV, Ernakulam. It was further stated that the appellant was out of station. I am not inclined to accept both the above contentions, since, though admittedly the case was transferred to the Judicial first Class Magistrate Court-IV, Ernakulam, there could not have been an individual notice to each of the complainant in each case.

Evidently, accused appeared before the court below. However, the complaint seems to have been filed in 2003. The matter was being prosecuted thereafter till it had its ultimate fate on 02.07.2010. Hence, it is presumable that the matter was being prosecuted diligently till that day. Though the absence of the complainant on the three posting dates is not explained, in the interest of justice, parties should be relegated to the trial court for a trial on merits and disposal.

In the result, the appeal is allowed. Impugned order is set aside and the matter is remanded to the court below for enabling the complainant to lead evidence. Both sides shall appear before the court below on 16.12.2015. Court below, having regard to the fact that the matter has been pending since 2003, shall try to dispose of the matter at the earliest.

Sd/-
SUNIL THOMAS
Judge

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