

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

CRL.A.No. 474 of 2012 ()

AGAINST THE ORDER IN CrI.L.P. 151/2012 of HIGH COURT OF KERALA DATED
06-03-2012

AGAINST THE ORDER IN ST 3657/2008 of THE JUDICIAL 1ST CLASS
MAGISTRATE, OTTAPALAM DATED 07-11-2009

APPELLANT(S)/COMPLAINANT:

P.A.KRISHNAN, S/O.SAMBAYAN,
PUTHIKA HOUSE, PALAPPURAM AMSOM DESOM,
OTTAPALAM TALUK.

BY ADV. SMT.T.D.RAJALAKSHMI

RESPONDENT(S)/ACCUSED AND STATE:

1. BHANUMATHI THILAKAN,
W/O. THILAKAN, SREEHARI, KUNNATHULLIL HOUSE,
THEKKUMURI DESOM, THOTTAKARA AMSOM, OTTAPALAM TALUK,
PIN 679 102, OTTAPALAM P.O.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM - 682 031.

R2 BY PUBLIC PROSECUTOR SMT.M.G.LISHA.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
04-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 474 of 2012

Dated this the 4th day of November, 2015

J U D G M E N T

The appellant as the complainant had laid a complaint invoking Section 138 of the Negotiable Instruments Act, on the strength of a cheque for a sum of ₹50,000/-. Cognizance was taken and notice was issued to the accused, who appeared. Thereafter, the case was posted to various dates and ultimately to 07.11.2009. On that day, the complainant was not present. However, an application was filed as CMP No.4443/2009. The learned Magistrate dismissed the above application on a reasoning that no genuine ground has been made out. Consequently, the accused was acquitted invoking Section 256(1) of the Cr.P.C. This is under challenge in this appeal.

2. Notice was served on the 1st respondent, who did not appear. Heard and examined the records.

3. It is an admitted fact that, the case stood posted on 07.11.2009 for evidence. The impugned order itself shows that, the complainant was given a direction to be present for tendering

evidence. The learned counsel for the appellant invited my attention to the prayer made in CMP No.4443/2009, a certified copy of which was produced. It was stated that, a relative of the complainant had died and that the complainant had gone to Chennai. The learned counsel contended that, a proper and valid excuse has been mentioned and the court below could not have treated it as a routine or casual application for condonation of the delay. There seems to be some justification in the contention set up by the learned counsel for the appellant. Apparently there was nothing on record before court to disbelieve the version made by the complainant or to conclude that no genuine ground was made out. Obviously, after having filed a complaint in the year 2008 and prosecuting it till November, 2009, it cannot be expected that the complainant would voluntarily remain absent and invite a dismissal of his complaint. In the above circumstance, the Court below ought to have taken a lenient view and granted one more opportunity. Hence 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 prosecute his matter. The court below shall grant a reasonable opportunity to the complainant to tender his evidence. Both sides shall appear before the Court below on 17.12.2015. In the event of the accused remaining absent, the court below shall issue summons to him to procure his presence.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn