

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

CRL.A.No. 1165 of 2013 ()

(AGAINST THE ORDER/JUDGMENT IN Cr1.L.P. 464/2013 of HIGH COURT OF
KERALA DATED 29-07-2013 AGAINST THE ORDER/JUDGMENT IN ST 1649/2006 of
J.M.F.C.-VIII, TRIVANDRUM)

APPELLANT(S)/COMPLAINANT:

B.JAYACHANDRAN,
T.C 47/1601, SREEVALSAM, KARAMANA P.O
TRIVANDRUM

BY ADV. SRI.T.K.ANANDA KRISHNAN

RESPONDENT(S)/ACCUSED & STATE:

1. STATE OF KERALA
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM

2. K.KANNAN,
S/O.KRISHNAN ACHARI
UMA MAHESWARA SWAMI HALL CONTONMENT SOUTH, KOLLAM 1

R BY PUBLIC PROSECUTOR SMT.M.G.LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl.A. No. 1165 of 2013

Dated this the 25th day of November, 2015

JUDGMENT

The appellant had laid a complaint under Section 138 of the Negotiable Instruments Act on the strength of a dishonoured cheque for a sum of Rs.25,000/-. After appearance of the accused, there were several postings and ultimately it was posted to 5/10/2010 as a last chance for evidence. When the matter was taken up, the complainant was not present and there was no representation also. The court below invoking Section 256(1) of Cr.P.C., dismissed the complaint and acquitted the accused. That order is under challenge in this appeal.

2. In spite of service of notice on the second respondent, he has not appeared to contest the proceedings. Since the matter itself can be disposed of on admitted facts, records are not called for.

3. It is an admitted fact that on 5/10/2010, the matter stood posted as a last chance for evidence. It is further admitted that the appellant was absent and the counsel was also absent. In the above circumstances, the court below was legally justified in passing the order which it deem fit and proper in the facts and

circumstances of the case. However, it is pertinent to note that the complaint was filed in the year 2006. Thereafter, till it was dismissed in October 2010, it was being properly and diligently prosecuted by the complainant. The court below could have taken notice of this fact and could have granted one more reasonable opportunity. To that extent, the impugned order seems to be legally not sustainable.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remanded to the court below for fresh consideration. Both sides shall appear before the court below on 6/1/2016. In the event of the accused remaining absent on that day, the petitioner shall issue fresh summons to him to ensure his presence.

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.

SUNIL THOMAS, J.

. No. OF 20

Dated this the 25th day of November, 2015

O R D E R/JUDGMENT

Crl.A.No.1165/2013

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SUNIL THOMAS
Judge

dpk

