

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

CRL.A.No. 47 of 2011 (A)

AGAINST THE ORDER IN CrI.L.P. 1018/2010 of HIGH COURT OF KERALA DATED
21-10-2010

AGAINST THE ORDER IN CC 4/2010 of J.M.F.C.-I, HOSDRUG DATED 16-07-2010

APPELLANT(S)/COMPLAINANT:

A.P.BALAKRISHNA ACHARY,
AGED 44 YEARS,
S/O.VELUTHAMBU ACHARY,
POINACHI MOTTA,
THEKKIL P.O., KASARGOD DISTRICT

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENT(S)/ACCUSED & STATE:

- 1.THE GOLDEN FOREST (INDIA LTD.),
REPRESENTED BY ITS MANAGING DIRECTOR,
REGISTERED HEAD OFFICE 500 834 GOLDEN COMPLEX,
MANIMANJARA P.O.,
MANIMANJARA, CHANDIGARH 160101.
- 2.RAVEENDRAN, AGED 45 YEARS,
C/O.RAJAKUMAR, RESIDING AT ALAMIPALLY,
KANHANGAD POST, HOSDURG TALUK, KASARGOD DISTRICT 671 315.
- 3.STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM 682031.

R3 BY PUBLIC PROSECUTOR SRI.ABHIJITH LESLIE
R2 BY ADV. SMT.T.SUDHAMANI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
21-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 47 of 2011

Dated this the 21st day of December, 2015

J U D G M E N T

The appellant laid a complaint on the basis of a cheque for a sum of ₹1,70,000/-, invoking Section 138 of the Negotiable Instruments Act. The 2nd accused appeared and the case stood posted for the appearance of the 1st accused (1st respondent herein). On 16.07.2010, there was no appearance for the complainant nor was he effectively represented. Steps were also not taken against the 1st respondent. Hence the Court below invoked Section 256 Cr.P.C., dismissed the complaint and acquitted the accused. This is under challenge in this appeal.

2. Heard the learned counsel for the appellant. The 2nd respondent has appeared on service. Examined the available records.

3. It is seen that the case was posted on 16.07.2010 for taking steps against the 1st respondent, who was the 1st accused. Admittedly, no steps were taken. There was no representation also. Though the personal appearance of the complainant was not essential on that day, it was mandatory on his part to take

steps. However, having regard to the fact that the complaint was filed in 2010 and thereafter till the date of dismissal the complainant had been prosecuting it and also considering the huge amount involved, I feel that one more opportunity can be granted to the appellant to take fresh steps and to procure the presence of the accused.

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 appear either by himself or through a counsel and to take effective steps to serve notice on the 1st respondent. If the 2nd respondent also remain absent, the Court below shall issue fresh summons to both. Both sides shall appear before the court below on 30.01.2016.

S d/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge