

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

CRL.A.No. 71 of 2011 ()

AGAINST THE ORDER IN Cr1.L.P. 1126/2010 of HIGH COURT OF KERALA DATED 25-11-2010

AGAINST THE ORDER IN ST 558/2006 of J.M.F.C.-VIII, THIRUVANANTHAPURAM DATED 29-03-2010

APPELLANT(S)/COMPLAINANT:

N.S.MONEY, AGED 47 YEARS,
S/O.NATARAJA PILLAI, NATARAJ TANK VIEW LANE,
PALKULANGARA, PETTAH P.O., THIRUVANANTHAPURAM - 695024.

BY ADV.SRI.K.SHAJ

RESPONDENT(S)/ACCUSED AND STATE:

1. SHIJU STANLEY, S/O. DR.P.STANLEY JONES,
SEILOW, NEAR STANLEY HOSPITAL, UDAYANKULANGARA
NEYATTINKARA.

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

R2 BY PUBLIC PROSECUTOR SRI.ABHIJITH LESLIE.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
27-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 71 of 2011

Dated this the 27th day of October, 2015

J U D G M E N T

The appellant had filed S.T.No. 558/2006 alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, on the strength of a dishonoured cheque for a sum of ₹1,00,000/-. The accused appeared before the Court, pursuant to the summons and thereafter there were few postings. Ultimately the case stood posted to 29.03.2010. On that day, both the complainant and the accused were absent and applications were filed seeking condonation of their absence. The Court below, by the impugned order, allowed the application filed by the accused and dismissed the application filed by the learned counsel for the complainant on the ground that the Court did not find any bonafides in the application of the complainant. Consequently, the complaint was dismissed and the accused was acquitted. This is under challenge in this appeal.

2. In spite of service of notice on the 1st respondent, he has not appeared. Heard the learned counsel for the appellant.

3. The impugned order itself indicates that the accused appeared on 26.09.2008 and bail was granted on that day. There

were several postings thereafter and ultimately on 25.09.2008 a direction was given to the complainant to appear with original records on 14.02.2009. On the subsequent posting dates, there was no sitting and the case was taken up on 13.07.2009. Thereafter, the case stood posted to 16.01.2010, on which day also there was no sitting. The case was ultimately posted to 29.03.2010, on which day the impugned order was passed.

4. An application was filed on behalf of the complainant on the ground that, he was working as a Superintendent of KSRTC and he was unable to appear before the court on that day. Learned counsel explained that, he could not obtain leave on that day, which disabled him from appearing before the Court. The impugned order does not disclose as to why the Court found no bonafides in the impugned order. On the other hand, the very fact that, a substantial amount is involved and the complainant was prosecuting the matter since the date of inception which was in the year 2006 and thereafter continuously till the date of its dismissal in March, 2010 itself is a sufficient indication that he was diligently prosecuting the matter. Having regard to this fact, the Court below ought to have granted one more opportunity to

the complainant to prosecute the matter. This has also to be appreciated in the back ground that, in fact, on that day he was represented by a counsel and even an application was also filed. Having regard to the above facts, 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 for granting the appellant a reasonable opportunity to tender his evidence. Both sides shall appear before the court below on 14.12.2015. In the event of the accused remaining absent on that day, the court below shall issue fresh summons to the accused to procure his presence.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn