

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

CRL.A.No. 73 of 2011 ()

**AGAINST THE ORDER IN CC 72/2009 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT-I,KOCHI DATED 17-02-2010**

**AGAINST THE ORDER IN CrI.L.P. 1/2011 OF HIGH COURT OF KERALA
DATED 06-01-2011**

APPELLANT/COMPLAINANT:

**K.L.FRANCIS,
KAITHAVALAPPIL HOUSE, MARUVAKKAD, NORTH CHELLANAM
CHELLANAM, KOCHI-8.**

**BY ADVS.SRI.C.ANILKUMAR (KALLESSERIL)
SRI.P.M.MANASH**

RESPONDENTS/ACCUSED & STATE:

**1. V.J.JOHN,
VACHAKKAL HOUSE, NEAR LEJI THEATRE, SOUTH CHELLANAM
CHELLANAM, KOCHI-8.**

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

**R1 BY ADVS. SRI.JAICE JACOB
SRI.G.G.MANOJ
SRI.P.M.BENZIR**

R2 BY PUBLIC PROSECUTOR SRI. GITHESH R.

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 11-02-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

K. ABRAHAM MATHEW, J.

Crl.A.No.73 of 2011

Dated this the 11th day of February, 2015

J U D G M E N T

The appellant was the complainant and the first respondent the accused in C.C.No.72/2009 on the file of the Judicial First Class Magistrate-I, Kochi. The allegation was that the first respondent committed the offence under Section 138 of N.I. Act. On 17.2.2010 the learned Magistrate recorded as follows: "Accused exempted. Complainant absent. No representation. Complainant did not turn up to give evidence in spite of repeated opportunity. Accused is acquitted under Section 256 Cr.P.C." The legality of the order is challenged.

2. Heard the learned counsel for the appellant and the learned counsel for the first respondent.

3. The first respondent was given exemption under Section 205 Cr.P.C. On 5.12.2009 he filed an affidavit in lieu of his examination-in-chief. The defence counsel sought time for cross-examination. The case was adjourned to

19.12.2009 on which date the appellant was absent. It was adjourned to 2.1.2010. On that day also he was absent. On 7.1.2010 he was present and the case was adjourned for his cross-examination to 14.1.2010 at the request of the defence counsel. On 14.1.2010 the defence counsel again sought time for cross-examination. On 23.1.2010 the appellant was present. But the case was adjourned to 9.2.2010. On 9.2.2010 the appellant remained absent and the case was adjourned to 17.2.2010. On that day he did not turn up and the learned Magistrate passed the impugned order of acquittal.

4. It appears that on several posting dates the appellant was present for cross-examination. But the learned defence counsel was not ready to cross-examine him, which cannot be ignored. I think one more opportunity should be given to the appellant so that the first respondent may cross-examine him.

In the result, this appeal is allowed. The impugned order is set aside. The appellant and the first respondent

are directed to appear before the trial court on 10.3.2015, on which day the learned Magistrate shall adjourn the case to a day which is convenient for both parties for the cross-examination of the appellant. If he does not turn up on that day, the learned Magistrate may pass appropriate orders.

Sd/-
K. ABRAHAM MATHEW
JUDGE

//True copy//

P.A. TO JUDGE

shg/