

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

CRL.A.No. 1225 of 2013 ()

AGAINST THE ORDER IN CC 213/2009 of J.M.F.C., PARAVUR DATED
10-04-2013

AGAINST THE ORDER IN Cr1.L.P. 468/2013 of HIGH COURT OF KERALA DATED
22-07-2013

APPELLANT(S)/PETITIONER/COMPLAINANT:

MURALEEDHARAN,
SUBHASH BHAVAN, CHATHANNOOR (P.O), KOLLAM.

BY ADVS.SRI.K.V.ANIL KUMAR
SRI.AJITH MURALI

RESPONDENT(S)/RESPONDENTS/ACCUSED AND STATE:

1. P.ANILKUMAR
S/O.PADMANABHAN ACHARY, PADMA VIHAR, THAZHATHERY
KOTTIKKADA (P.O), KOLLAM.

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

R2 BY PUBLIC PROSECUTOR SMT.M.G.LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
14-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 1225 of 2013

Dated this the 14th day of December, 2015

J U D G M E N T

The appellant is the complainant in C.C. No.213/2009 of the Judicial First Class Magistrate, Paravur. He laid a private complaint invoking Section 138 of the Negotiable Instruments Act, on the strength of a dishonoured cheque for a sum of ₹1,80,000/-. The accused appeared after several postings. Ultimately the case stood posted to 10.04.2013, on which day, neither the complainant nor his counsel were present. The Court below, invoking Section 256(1) Cr.P.C. acquitted the accused, noting that the complainant was absent and there was no representation. This is under challenge in this appeal.

2. Though notice was served on the 1st respondent, he has not appeared to contest the proceedings. Heard the learned counsel for the appellant and examined the available records. Since the matter can be disposed of on the basis of the available records, Lower Court Records are not awaited.

3. It is an admitted fact that the complainant was absent on 10.04.2013 and there was no representation either. The

learned counsel submitted, relying on the version in the appeal memorandum that he could not be present on that day, since the Clerk had wrongly taken down the date as 10.05.2013, instead of 10.04.2013. *Prima facie*, this does not appear to be correct, since in the normal course the complainant would have been aware of the wrong posting only on 10.05.2013. However, the copy application is seen filed on 12.04.2013. The learned counsel for the appellant explained that immediately after the dismissal, he came to know about it through another source. This is not seen specifically pleaded. This contention however remains uncontroverted in the absence of the 1st respondent. Even otherwise, I am not inclined to readily presume that the absence of the complainant and his counsel on 10.04.2013 would have been deliberate or intentional. This was precisely for the reason that the complaint was instituted in the year 2009 and till 2013, the complainant had been diligently prosecuting the matter. Further, a huge amount of ₹1,80,000/- is involved. Hence in the normal course of conduct it is very unlikely that the complainant would remain voluntarily negligent and by his deliberate conduct invite a dismissal of his complaint. Having regard to these facts,

I feel that the complainant is entitled for one more opportunity to prosecute his matter.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remitted back to the trial Court for enabling complainant to prosecute his case. Both sides shall appear before the Court below on 25.01.2016. In the event of the accused remaining absent, the Court below shall issue fresh summons to the accused and procure his presence.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn