

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

CRL.A.No. 502 of 2014 (A) IN CrL.L.P..112/2014

AGAINST THE ORDER IN ST 141/2009 of JUDICIAL FIRST CLASS MAGISTRATE,
SULTHANBATHERY DATED 27-02-2010

AGAINST THE ORDER IN CrL.L.P. 112/2014 of HIGH COURT OF KERALA DATED
02-06-2014

APPELLANT/COMPLAINANT:

M/S.DHANASHILPI CHITS (P) LTD.
SULTHAN BATHERY, REPRESENTED BY ITS MANAGER
V.K.DIVAKARAN, S/O.KUNHAN CHETTY, VEMBILATH HOUSE
MOODAKOLLY P.O., VAKERI, WAYANAD DISTRICT.

BY ADV. DR.GEORGE ABRAHAM

RESPONDENTS/ACCUSED:

1. SURENDRAN P.R.
POOVATHINGAL HOUSE, PULPALLY P.O., PULPALLY
WAYANAD DISTRICT.

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

BY PUBLIC PROSECUTOR: SMT LISHA M G

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

=====

Crl.A.No.502 of 2014

=====

Dated this the 9th day of November, 2015

JUDGMENT

This appeal arises from the order of the court below dated 27.02.2010 by which the complaint was dismissed and the accused was acquitted invoking Section 256(1) of the Cr.P.C.

2. The complainant had laid a complaint on the basis of a dishonoured cheque for a sum of Rs.13,075/-. After several postings, case stood posted to 27.02.2010. On that day, neither the complainant nor the counsel were present. Hence, the accused was acquitted under Section 256(1) of the Cr.P.C.. This is assailed in this appeal.

3. The first respondent has been served. He has not chosen to appear and oppose the application. Since the appeal itself could be disposed of at the admission stage itself, on admitted facts, the matter was heard.

4. Learned counsel for the appellant fairly conceded that on the posting date, neither the complainant nor the counsel were present. However, the absence was sought to be justified relying on the statement of facts mentioned in the appeal memorandum at ground B, C and D to contend that the then Manager was found to

have colluded with the accused and was acting against the interest of the company. The allegation against the accused was detected when the final audit was conducted in January 2013. This justifies the reason why the complainant was not present. However, the absence of the counsel is not still explained. Hence, the court below was legally justified in passing an appropriate order.

5. However, having regard to the fact that complaint was filed on 26.02.2009 and was being prosecuted diligently till 27.02.2010, the date of the impugned order, I feel that a lenient view is liable to be taken. The Court would have been more justified, had it granted a reasonable opportunity to the complainant to prosecute his matter.

In the result, the appeal is allowed. Impugned order is set aside. The matter is remanded to the court below to enable the complainant to take one more last opportunity to prosecute his matter. Both sides shall appear before the court below on 18.12.2015. If the accused remain absent on that day, the court below shall issue summons to him, to ensure his presence.

Sd/-
SUNIL THOMAS
Judge

Sbna