

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

CRL.A.No. 518 of 2014 () IN Cr1.L.P..149/2013

AGAINST THE JUDGMENT IN ST 560/2009 of JUDICIAL FIRST CLASS MAGISTRATE,
KOTTAYAM DATED 04-09-2010

AGAINST THE ORDER IN Cr1.L.P. 149/2013 of HIGH COURT OF KERALA DATED
08-03-2013

APPELLANT/COMPLAINANT:

JAYAMON R.P.
PUNNAPARAMBIL (SAGARA) HOUSE, THEKKUMGOPURAM
KOTTAYAM.

BY ADV. SRI.K.P.SUJESH KUMAR

RESPONDENTS/ACCUSED AND STATE:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-31

2. MANIKANTAN
THAIPRAMPIL HOSUE VELLOOR P.O., KOTTAYAM-686001.

BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.518 of 2014
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Dated this the 24th day of November, 2015

JUDGMENT

The appellant is the complainant in S.T.No.560 of 2009 of the Judicial First Class Magistrate Court-I, Kottayam for offence punishable under Section 138 of the Negotiable Instruments Act. In the complaint, summons was issued to the accused, who did not appear. Thereafter, non-bailable warrant was issued to the accused and was pending. In the meanwhile, the complainant was directed to furnish the correct address of the accused since the earlier warrant was returned unserved. However, the complainant remained absent on 23.07.2010 and thereafter, on the subsequent two posting dates. Ultimately the matter was taken up on 04.01.2010, on which day also, there was no representation. Consequently, the court below by the impugned order acquitted the accused invoking Section 256(1) of the Cr.P.C. This is challenged by the appellant in this proceeding.

2. In spite of service of notice on the first respondent, he has not appeared to contest the proceedings. Since the extract of proceeding before the court below is available on record, LCR was

not called for.

3. It is an admitted fact that the complaint stood posted to 23.07.2010 on which day, the complainant was absent. Thereafter, it was adjourned to 20.08.2010, then to 31.08.2010 and finally to 04.09.2010. On all those posting dates, neither the complainant nor his counsel was present. In the above circumstance, the court below was within its jurisdiction to pass an appropriate order.

4. Learned counsel for the appellant assailed the above order inter alia on the ground that the court below could not have acquitted the accused invoking Section 256(1) of the Cr.P.C. To buttress his argument, learned counsel relied on the decision reported in **Subhash B. Ravu v. Varghese (2010(4) KLT 535)** wherein it was held that in such a case, Court cannot invoke Section 256(1) of the Cr.P.C. and the only option available to the Court was to dismiss the complaint. Learned counsel for the appellant is well-grounded on that.

5. It is also pertinent to note that complainant has set up a case that the advocate clerk inadvertently failed to take note of the various posting dates resulting in the absence of the counsel and the complainant. Though, there is nothing to evidence it, in the

absence of this uncontroverted version, I am inclined to accept it as such. Consequently, the impugned order is liable to be set aside to enable the complainant to prosecute his case.

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, to furnish the correct address of the accused and thereafter, to take necessary steps as may be warranted. The appellant shall appear before the court below on 06.01.2016.

Sd/-

SUNIL THOMAS
Judge

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P.A to Judge