

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

CRL.A.No. 1274 of 2013 ()

AGAINST THE ORDER IN CC 735/2010 of JUDICIAL FIRST CLASS MAGISTRATE
COURT-I, ATTINGAL DATED 02-08-2011

AGAINST THE ORDER IN Cr1.L.P. 443/2013 of HIGH COURT OF KERALA DATED
16-07-2013

APPELLANT/COMPLAINANT:

ATTINGAL MUNICIPALITY
REPRESENTED BY THE SECRETARY, MUNICIPAL COMPLEX
ATTINGAL.

BY ADV. SRI.AYYAPPAN SANKAR

RESPONDENTS/ACCUSED/STATE:

1. SUNILDUTT, RESIDING AT KIZHAKKEVILAKOM
PANDAKASALA
CHIRAYINKEEZH P.O., THIRUVANANTHAPURAM-695304

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

BY PUBLIC PROSECUTOR: SMT M.G.LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 16-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.1274 of 2013

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Dated this the 16th day of December, 2015

JUDGMENT

The appellant, which is a local Municipality, laid a complaint invoking Section 138 of the Negotiable Instruments Act on the basis of a cheque for a sum of Rs.3,49,655/- which was alleged to have been issued by the accused and got dishonoured on ground of insufficiency of funds. Summons was issued from the magistrate court which could not be effected. The case stood posted to 02.08.2011. On that day, the complainant and the counsel were absent. The court below invoked Section 256 of Cr.P.C and dismissed the complaint. This is challenged in this appeal.

2. In spite of service of notice on the first respondent, he has not appeared to contest the proceeding. Since the matter can be proceeded on the basis of the available materials and admitted facts, records are not awaited.

3. Learned counsel for the appellant fairly conceded that on that day, the appellant was absent and the counsel was also absent. According to the counsel, it was due to the illness of the

counsel that he could not be personally present and the matter was entrusted with another counsel who mistakenly did not represent. It was contended that there was no deliberate omission or negligence on the part of the appellant.

4. The appeal memorandum itself shows that the Court had ordered to repeat summons on 11.02.2011 and thereafter on 02.08.2011. Admittedly, steps were not taken on that day. Though, the presence of the complainant was not essential on that day, it was obligatory on the complainant/appellant to take steps. It was not done. Hence, legally the court below cannot be found fault with for having invoked Section 256 of Cr.P.C. However, the court below ought to have looked into the question as to whether there was a deliberate omission on the part of the appellant and dilatory tactics being adopted. Being a Municipality and having regard to the fact that huge amount was involved and the further fact that the complaint was laid on 23.07.2010 and thereafter, it was being diligently prosecuted till its dismissal on 02.08.2011, it cannot be safely be presumed that the complainant would have voluntarily remained absent or intended to delay proceeding. Since the court below failed to take note of this fact, I feel that the

appellant is entitled for one more opportunity to prosecute his matter. Hence, the impugned order is set aside.

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 prosecute his matter. Both sides shall appear before the court below on 27.01.2016. Appellant shall appear before the court below on that day and take steps as ordered by the court below on the same day itself. Court below shall thereafter proceed in accordance with law.

Sd/-
SUNIL THOMAS
Judge

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True Copy /

P.A to Judge