

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

CRL.A.No. 157 of 2011 ()

AGAINST THE ORDER IN CC 190/2009 of JUDICIAL FIRST CLASS MAGISTRATE-II, CHENGANNUR DATED 19.10.2010

AGAINST THE ORDER IN Cr1.L.P. 1153/2010 of HIGH COURT OF KERALA DATED 03.12.2010.

APPELLANT(S) /COMPLAINANT:

VINURAJ, JANAKI BHAVAN,
PERUMPUZHA,
KOLLAM.

BY ADV. SRI.ALEXANDER GEORGE

RESPONDENT(S) /ACCUSED/STATE:

1. N.JAYALAKSHMI, SMITHA NIVAS,
ASRAMAM P.O., SARAYU NAGAR - 16, KOLLAM
PIN 690021.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM
PIN 682081.

R1 BY ADV. SRI.ABRAHAM JOHN
R2 BY PUBLIC PROSECUTOR SRI.REJI JOSEPH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
08-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 157 of 2011

Dated this the 8th day of October, 2015

J U D G M E N T

The complainant in a proceeding under Section 138 of the Negotiable Instruments Act, is aggrieved by the order dated 19.10.2010, by which the learned Magistrate dismissed the complaint and acquitted the accused invoking Section 256(1) of the Cr.P.C.

2. The impugned order indicates that, the matter was posted for evidence from 10.08.2009 onwards. The learned Magistrate has indicated that, thereafter repeated directions were given to the complainant who did not turn up for evidence. Ultimately, on 19.10.2010 there was no representation and the complainant was also absent. This resulted in the impugned order.

3. Heard both sides and examined the records.

4. The learned counsel for the respondent/accused vehemently contended that, the previous proceedings indicated that the Court was justified in dismissing the complaint, since the complainant was not effectively prosecuting the case. It was

submitted that, several postings were given to the complainant to appear and to prosecute the matter. The learned counsel for the accused justifiably contended that the cheque was presented twice as evident from the photocopy of the cheque and no explanation is forthwith coming regarding the non-filing of the complaint at the first dishonour. It was further submitted that, the original cheque was also not produced, which cumulatively indicated that he has not been seriously prosecuting the matter.

5. However, it is evident that, the allegation is on the strength of a cheque for a sum of ₹2,00,000/-. The complainant has been prosecuting the matter since 2007 onwards. The learned counsel for the complainant submitted that the reason for the absence of the complainant and his counsel was that, while they were travelling together on their way to the Court, the vehicle met with an accident and they sustained minor injuries. They were administered first aid at Mamman Memorial Hospital at Chenganoor with O.P.Card No.9437. These facts, I feel *prima facie* establish a valid cause for their absence. Evidently, in the absence of the counsel and the complainant, the Court below was legally justified in passing an appropriate order. However,

considering the entire facts, I feel that one more opportunity can be granted to the complainant as a last chance to prosecute the matter.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remanded to the Court below for a fresh consideration. Both sides shall appear before the Court below on 24.11.2015. On that day, the complainant shall produce all his documents, if any, and offer himself for tendering evidence. In case the complainant is not ready for evidence, the Court below will be free to regulate its own proceedings and pass appropriate orders.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge