

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

CRL.A.No. 158 of 2011 ()

AGAINST THE ORDER IN Cr1.L.P. 1144/2010 of HIGH COURT OF KERALA DATED
02-12-2010

AGAINST THE ORDER IN CC 217/2009 of J.M.F.C.-III, KOTTARAKAKARA DATED
07-10-2010

APPELLANT(S) / PETITIONER/COMPLAINANT:

BABU GEORGE, S/O.GEORGE DANIEL,
PANDAKASALA KIZHAKETHIL, VETTIKAVAL VILLAGE, KARICKAM
KOTTARAKARA TALUK.

BY ADV. SRI.ALEXANDER GEORGE

RESPONDENT(S) / ACCUSED / STATE:

1. DANEIL, S/O.MATHAI,
PARAMBIL THEKKEKKARA VEEDU, MYLAM VILLAE, MYLOM MURI
KOTTARAKARA, PIN 690021.

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

R1 BY ADV. SRI.T.T.RAKESH

R2 BY PUBLIC PROSECUTOR SRI.ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
02-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 158 of 2011

Dated this the 2nd day of December, 2015

J U D G M E N T

The appellant was the complainant in C.C. No.217/2009 of the Judicial First Class Magistrate Court No.III, Kottarakara for offence punishable under Section 138 of the Negotiable Instruments Act.

2. After the appearance of the accused, the case stood posted for evidence to 07.10.2010. On that day, the complainant was absent and he was also not represented but the accused was represented. On a reasoning that, though several postings were given to the complainant for adducing evidence, evidence was not adduced and recording that, in spite of specific direction the complainant has not appeared, the learned Magistrate by the impugned order acquitted the accused invoking Section 256(1) of the Cr.P.C. This is under challenge in this appeal.

3. Heard both sides and examined the records.

4. The learned counsel for the appellant contended that, though the appellant was present on that day, the case was called with a wrong number, which misled the complainant.

5. I am not inclined to accept that contention since the accused was represented on that day. However, it is evident that the complaint was filed in the year 2008 on the strength of a

dishonoured cheque for a sum of ₹1,00,000/-. The matter was pending from that day onwards, till the accused was acquitted on 07.10.2010. The learned counsel for the appellant has produced before this Court a copy of the order sheet, which shows that on the earlier posting dates, the complainant was present. It is also pertinent to note that, the copy application for the impugned order was filed on the next day of its dismissal itself. These eminently indicate that the appellant was bonafide litigating the matter, though due to reasons known to the complainant he remained absent on that day. There is no explanation forthcoming as to why the counsel was also absent. However, I am satisfied that it cannot be a case of deliberate attempt to protract the proceedings or that the complainant remained absent with malafide notice. In the absence of any such findings, the impugned order is liable to be set aside and one more opportunity is liable to be granted to the appellant.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remanded to the Court below. Both sides shall appear before the court below on 14.01.2016.

Sd/-
SUNIL THOMAS, JUDGE.
/true copy/

P. A. to Judge