

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

CRL.A.No. 197 of 2011 ()

AGAINST THE ORDER IN Cr1.L.P. 1041/2010 of HIGH COURT OF KERALA DATED
29-10-2010

AGAINST THE ORDER IN CC 699/2008 of J.M.F.C., CHALAKUDY DATED
30-07-2010

APPELLANT(S)/COMPLAINANT:

M/S.KORATTY HIRE PURCHASE,
VADAKKUMPADAM TOWERS, KORATTY,
REPRESENTED BY ITS MANAGING
PARTNER, PAULOSE, AGED 45,
EDAPULAVAN HOUSE, RAYANPURAM P.O., CHELAMATTAM,
ERNAKULAM DISTRICT.

BY ADVS.SRI.S.K.SAJU
SRI.A.RANJITH NARAYANAN
SRI.V.C.VALSAN
SRI.M.N.MANOJ

RESPONDENT(S)/ACCUSED & STATE:

1. HUSSAIN, AGED 45,
S/O.MUHAMMED,
MANJANTHURUTHIL HOUSE, NEDUMBASSERY P.O.,
PUTHUVASSERY
CHANGAMANAD, ERNAKULAM DISTRICT.,
PIN - 683 585.

2. STATE OF KERALA, REPRESENTED THROUGH
THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA AT ERNAKULAM,
COCHIN - 31.

R2 BY PUBLIC PROSECUTOR SRI.ABHIJITH LESLIE.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
27-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 197 of 2011

Dated this the 27th day of October, 2015

J U D G M E N T

The appellant had filed a complaint invoking Section 138 of the Negotiable Instruments Act, on the strength of a dishonoured cheque for a sum of ₹29,000/-, allegedly issued by the accused. Pursuant to the summons issued, the accused appeared before the Magistrate Court and thereafter the case stood posted to 30.07.2010. On that day, the complainant was absent. Recording that, in spite of repeated directions the complainant was not present, the court below acquitted the accused invoking Section 256 Cr.P.C. This order is impugned in this appeal.

2. In spite of service of notice on the 1st respondent, he has not appeared. Heard the learned counsel for the appellant.

3. Admittedly, the complainant was absent on 30.07.2010. The learned counsel explained the absence on the ground that the complainant is stationed in Ernakulam District and in spite of being a hartal day, he managed to reach the Court. However, by that time, the accused stood acquitted under Section 256 Cr.P.C. The impugned order does not disclose as to whether

the complainant was represented. It also does not disclose that he was not represented either. The reason stated by the Court below for acquittal is that, in spite of repeated directions to the complainant, to be present he did not turn up for adducing evidence. The claim of the complainant that, being a hartal day, it disabled him from reaching the Court on time, remains uncontraverted. However, the second part of the contention that he reached the Court on the same day, does not appear to be correct since the copy application was seen filed only on 16.08.2010. However, it cannot be forgotten that the complaint was filed in the year 2008 and the matter was being prosecuted by him till July, 2010 when it was dismissed. Considering these facts, I feel that, the complainant is entitled for a reasonable opportunity to tender his evidence. Hence the impugned order is liable to be set aside.

4. 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 after affording a reasonable opportunity to the complainant to tender his evidence. It is made clear that, in the event of the accused remaining absent, the Court below

shall issue fresh summons to him to procure his presence.

Both sides shall appear before the Court below on
15.12.2015.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn