

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

CRL.A.No. 868 of 2012 ()

AGAINST THE ORDER IN Cr1.L.P. 226/2012 of HIGH COURT OF KERALA DATED
09.04.2012

AGAINST THE ORDER IN CC 468/2008 of SPL.JUDICIAL FIRST CLASS MAGISTRATE
FOR TRIAL OF MARADU CASES, KOZHIKODE DATED 16-12-2009

APPELLANT/COMPLAINANT:

P.K.XAVIER AGED 49 YEARS
S/O.P.P.DAVID, CALICUT PLASTICS, DOOR NO-1989 C
EAST KOTTAPPARAMBA, G.H.ROAD, CALICUT-673001
(WITHIN KASABA POLICE STATION LIMITS)

BY ADV. SRI.A.RANJITH NARAYANAN

RESPONDENT/ACCUSED:

1. KANIKA DIGITAL FLEX PRINTING
NEAR NEW BUS STAND, VATAKARA, KOZHIKODE-673101

2. SRI.RATHEESH, AGED ABOUT 33 YEARS,
S/O.KELAPPAN, MANAGING PARTNER, KANKIA DIGITAL
FLEX PRINTING, ETTUTHENGULLATHIL, CHENNOLI P.O
NADUVANNUR, PERAMBRA, KOZHIKODE-673525
(WITHIN PERAMBRA POLICE STATION LIMIT)

3. STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

R1,R2 BY ADV. SRI.R.BINDU (SASTHAMANGALAM)
PUBLIC PROSECUTOR: ADV.M.G.LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 08-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.868 of 2012

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Dated this the 8th day of December, 2015

JUDGMENT

The appellant herein as the complainant laid a complaint, invoking Section 138 of the Negotiable Instruments Act, on the strength of a cheque for a sum of Rs.80,000/-. The accused appeared and contested the proceedings. After several postings, it stood posted to 16.12.2009 for evidence. On that day, the complainant was absent. Noting that the complainant was absent on the previous 15 posting dates, the Court below held that the complainant appeared to be not diligent in prosecuting the matter and consequently, acquitted the accused invoking Section 256(1) of Cr.P.C. This is under challenge in this appeal.

2. Heard both sides. Learned counsel for the respondents 1 and 2, opposed the request on the ground that the matter had been pending for quite some time and the appellant did not offer any valid explanation for his continued absence. Learned counsel further contended that though the absence was sought to be explained on medical grounds, no medical certificate was also produced.

3. The complaint was laid on the basis of a dishonoured cheque for a sum of Rs.80,000/-. Though the impugned order itself discloses that the complainant remained absent on the previous 15 posting dates, learned counsel for the appellant submitted that the appellant was laid up and was unable to attend the Court. It was also submitted that these 15 posting dates were within a short span of time. Learned counsel, with reference to paragraph 3 of the appeal memorandum, contended that a list of witnesses was furnished and even the affidavit in lieu of chief examination was also filed by the complainant. Though the complainant was not personally present on all posting dates, he was being effectively represented. It is also pertinent to note that the complaint was originally filed on 26.09.2008 before the Chief Judicial Magistrate Court. It was made over to Special Judicial First Class Magistrate Court (Marad cases). These facts eminently show that the complainant has been prosecuting the matter since the date of its institution in the year 2008. Merely on the ground that the complainant was absent on the previous 15 posting dates, it would not have been justifiable to reach a conclusion that the attempt of the appellant was to delay or protract the proceedings. In the

absence of any such material, I am inclined to grant one more opportunity to the complainant to prosecute his matter.

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 and to prosecute the matter. Both sides shall appear before the court below on 20.01.2016. The complainant shall be present on that day and offer himself for evidence.

Sd/-
SUNIL THOMAS
Judge

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P.A to Judge