

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

CRL.A.No. 789 of 2014 () IN CrL.L.P..977/2010

AGAINST THE ORDER IN CC 63/2009 of JUDICIAL FIRST CLASS MAGISTRATE-III,
KOTTARAKAKARA DATED 23-02-2010

AGAINST THE ORDER IN CrL.L.P. 977/2010 of HIGH COURT OF KERALA DATED
28-09-2010

APPELLANT/COMPLAINANT:

ANADAMMA W/o.GOPINATHAN
PUTHUPANATHOTTAM, VELIYAM, KOTTARAKKARA
KOLLAM.

BY ADVS.SRI.K.S.MANU (PUNUKKONNOOR)
SRI.P.SREEKUMAR

RESPONDENTS/ACCUSED:

1. DR.UNNIPILLAI
JOYTHIS, VELIYAM, KOTTARAKKARA
KOLLAM.

2. STATE OF KERALA,
REP. BY THE DIRECTOR GENERAL OF PROSECUTION
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.K.V.ANIL KUMAR
R2 BY PUBLIC PROSECUTOR : SMT.LISHA M G

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.789 of 2014
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Dated this the 9th day of November, 2015

JUDGMENT

The appellant herein as the complainant laid a complaint under Section 138 of the Negotiable Instruments Act on the strength of a cheque for a sum of Rs.33,000/-. Accused appeared and after several posting dates, it stood posted to 23.02.2010. On that day, there was no appearance for the complainant. The impugned order also does not show as to whether he was represented on that day. Accused was also absent. On a reasoning that though several opportunities were given to the complainant for giving evidence, she failed to appear before the court below, accused was acquitted by the Court invoking Section 256(1) Cr.P.C. The above order is impugned in this appeal.

2. Heard both sides and examined the records.

3. Learned counsel for the first respondent contended that the court below was perfectly justified in passing an order since the complainant did not turn up in spite of several opportunities granted. It is to be noted that though the amount is not substantial, the complaint was filed on 25.07.2007. He has been prosecuting the matter since then till 23.02.2010, when the accused stood

acquitted. It cannot be stated that the complainant was thoroughly lethargic in prosecuting the matter and it cannot reasonably be expected that after prosecuting the matter for three years, complainant voluntarily remain absent and invite a dismissal of his complaint. Though, the reason stated for the absence of the complainant is not fully convincing, still, I am inclined to hold that the court below would have been more justified if one more opportunity was granted to the complainant to prosecute the matter. On that ground, the impugned order is liable to be set aside.

In the result, the appeal is allowed. The impugned order is set aside. The matter is remanded to the court below to enable the complainant to tender her evidence. Both sides shall appear before the court below on 18.12.2015. The court below shall take the matter on file and proceed in accordance with law.

Sd/-
SUNIL THOMAS
Judge

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