

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

CRL.A.No. 426 of 2011 ()

AGAINST THE ORDER IN CrI.L.P. 144/2011 of HIGH COURT OF KERALA DATED
17-02-2000

AGAINST THE ORDER IN ST 580/2006 of C.J.M., KOLLAM DATED
29-11-2010

APPELLANT(S)/COMPLAINANT:

G.SIVASANKARAN NAIR,
KAILAS, PAZHANILATHUTHUDI, VADAKKEVILA NAGAR
C-6, VADAKKEVILA P.O., KOLLAM.

BY ADVS.SRI.S.SOMAN
SRI.R.SELVAKUMAR

RESPONDENT(S)/ACCUSED:

1. P.M.JAYARAJ,
M/S. SRI. JAI IMPEX, SANGAIYA CHETTIAR COMPLEX,
KOVALAM NAGAR, MAIN ROAD, MADURAI
TAMIL NADU-625 001.

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

R1 BY ADV. SRI.TOM JOSE
R2 BY PUBLIC PROSECUTOR SMT.M.G.LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
07-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 426 of 2011

Dated this the 7th 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 the appellant herein. The case was instituted in the year 2006. The matter was posted after the appearance of the accused on various posting dates and ultimately on 22.09.2010 for recording the evidence of the complainant with a strict direction that it would be as last chance. On that day, the complainant was absent and the case was again adjourned to 29.11.2010. On that day also the complainant was absent but it appears that he was represented. The Court below by the impugned order held that, the complainant has flouted the strict direction given by the Court and hence if further opportunity is granted, it will be a mockery to the justice. Consequently, the complaint was dismissed and the accused was acquitted. This is assailed in this appeal.

2. Heard both sides and examined the records.

3. The learned counsel for the complainant contended that, the petitioner was suffering from acute back pain and was

laid up and undergoing treatment. This was conveyed to the counsel and an adjournment was sought. Even though, it appears that an adjournment was sought by filing an application, no Medical Certificate was produced. However, the learned counsel for the appellant, at this stage tried to press into service a certificate issued by an Ayurvedic Physician. However, even if a matter is posted as a last chance, due to unforeseen and unexpected reasons, one may be disabled from attending the Court and if a valid and genuine cause is offered, the Courts are bound to consider it positively rather than treating it as flouting of the orders of the Court.

4. It is true that the matter has been pending since 2006. There is some substance in the persuasive arguments of the learned counsel for the respondent that, the proceedings before the Court below indicates that, the complainant was guilty of laches and was not serious in prosecuting the matter. However, it cannot be presumed that after having filed a complaint under Section 138 of the Negotiable Instruments Act, one would remain lethargic and not prosecute the matter.

5. Considering this fact and the submission of the learned counsel for the appellant that the cheque was for a sum of

₹3,00,000/-, I feel that, one more opportunity can be granted to the appellant to contest the matter on merits. Hence, I am inclined to set aside the impugned order and to remand the matter to the Court below for a fresh consideration, after giving a reasonable opportunity to the appellant to adduce evidence.

6. 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 giving the appellant a reasonable opportunity to adduce his evidence. This is with the strict direction that in the event of the appellant /complainant not prosecuting matter, the Court below will be free to regulate its own proceedings and pass appropriate orders.

Both sides shall appear before the Court below on 05.11.2015. On that day, the appellant shall be present in person and be ready for tendering evidence.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn