

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

CRL.A.No. 436 of 2011 ()

AGAINST THE ORDER IN CrI.L.P. 110/2011 of HIGH COURT OF KERALA DATED
10-02-2011

AGAINST THE ORDER IN COC 1061/2009 of J.M.F.C.-III, PALAKKAD DATED
14-07-2010

APPELLANT(S) /COMPLAINANT:

M/S SAI ENTERPRISES, DOOR NO.10/509,
NEAR UMMINI SCHOOL, DHONI P.O., PALAKKAD-678009
BY ITS PROPRIETOR, T.SREEKUMAR.

BY ADVS.SRI.A.R.GANGADAS
SRI.M.L.SURESH KUMAR

RESPONDENT(S) /ACCUSED AND STATE:

1. R.C.K.NAIR, PROPRIETOR,
M/S JAGAPATHY HATCHERIES, KARUMKUTTY, PARASSALA POST
THIRUVANANTHAPURAM-695001.

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

R1 BY ADV. SRI.S.MOHAMMED AL RAFI
R2 BY PUBLIC PROSECUTOR SMT.M.G.LISHA.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
08-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 436 of 2011

Dated this the 8th day of October, 2015

J U D G M E N T

The appellant is the complainant in C.C. No.1061/2009 of Judicial First Class Magistrate-III, Palakkad in a proceeding under Section 138 of the Negotiable Instruments Act. After the appearance of the accused, the case was posted for evidence to 14.07.2010. On that day, the complainant was absent and his counsel was also absent. Hence the Court below passed the impugned order by which, the complaint was dismissed and accused was acquitted invoking Section 256(1) of Cr.P.C.

2. Heard both sides and examined the records.

3. The reason stated by the appellant herein is that on the relevant day he was in fact present in Court, but the counsel was absent. His presence could not be effectively conveyed to the Court also. Having regard to the proceedings on that day, which indicates that the complainant was absent, *prima facie* there is nothing to believe the version of the complainant. In the above circumstance the impugned order is legally sustainable. However, the learned counsel for the appellant submitted that, the amount involved in the cheque is about ₹1,87,000/-. The

cheque was allegedly issued in April 2009 and thereafter the complaint was filed in 2009. Even though laches of the complainant is evident, considering the fact that, the complainant did not get an opportunity to establish his case on merit and atleast till 2010 he has been prosecuting the matter, I feel that, one more opportunity can be granted notwithstanding the fact that there is no patent illegality in the impugned order. Hence, I am inclined to allow the appeal and to set the impugned order to enable the complainant to prosecute the case, as a last chance.

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 complainant one more opportunity to adduce evidence. Both sides shall appear before the Court below on 26.11.2015. On that day, the complainant shall appear and offer himself for tendering evidence. In case the complainant is not ready for evidence, the Court below will be free to regulate further proceeding thereafter.

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

P. A. to Judge