

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

CRL.A.No. 458 of 2011 ()

AGAINST THE ORDER IN CrI.L.P. 187/2011 of HIGH COURT OF KERALA DATED
10-03-2011

AGAINST THE ORDER IN ST 1851/2006 of J.M.F.C.-II, PALAKKAD DATED
01-07-2010

APPELLANT(S)/PETITIONER/COMPLAINANT:

R.GOPINATHA PILLAI,
RESIDING AT 'SHIV RAM', C.N.PURAM,
PALAKKAD.

BY ADVS.SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA

RESPONDENT(S)/ACCUSED & STATE:

1. P.DHANYA, D/O.M.VENUGOPAL,
KONGATTIL HOUSE, ANAKKARA, POOVATHUR
THRISSUR 680 001.

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

R1 BY ADV. SRI.S.RAJEEV
R2 BY PUBLIC PROSECUTOR SRI.ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
09-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 458 of 2011

Dated this the 9th day of December, 2015

J U D G M E N T

The appellant is challenging the order dated 01.07.2010 by which the complaint filed by him on the basis of a dishonoured cheque was dismissed and the accused acquitted invoking Section 256 Cr.P.C.

2. Heard both sides and examined the records.

3. It is not in dispute that the case was posted to 01.07.2010 on which day, the complainant was absent. The Court below has taken note of the fact that though the complaint was filed in the year 2006 and had been pending for quite sometime and in spite of granting four chances for the complainant to adduce evidence, he did not turn up. The Court below has noted that the adjournment was sought on the ground of illness. It appears that, there was no record before the Court below to prove that. However, the diary extract of the case shows that the complainant was being represented effectively by the counsel. It cannot be presumed that after having filed the complaint in 2006 and prosecuting the matter till 2010, the complainant would

remain negligent to invite a dismissal of his own complaint. Though the previous conduct of the complainant is not very justifiable, I still feel that one more opportunity can be granted to the complainant as last chance.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remitted to the Court below to enable the complainant to appear and to offer himself for tendering evidence. Both sides shall appear before the Court below on 22.01.2016. The complainant shall be present in person on that day and be ready for evidence. If an application is filed by the accused to excuse his absence on that day, the Court below shall consider it appropriately.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn