

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

CRL.A.No. 461 of 2011 ()

AGAINST THE ORDER IN CrI.L.P. 99/2011 of HIGH COURT OF KERALA DATED
09-02-2011

AGAINST THE JUDGMENT IN ST 1230/2009 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT-II(MOBILE), KOTTAYAM DATED 06-02-2010

APPELLANT(S)/COMPLAINANT:

M/S.SREE GOKULAM CHIT & FINANCE CO.PVT.
LTD., WITH IT'S CENTRAL OFFICE AT NO.66, ARCOT ROAD,
KODAMPAKAM, CHENNAI-600 024
HAVING ONE OF IT'S BRANCH OFFICE AT PRAKKATTU
BUILDING, 1ST FLOOR, CENTRAL JUNCTION
KOTTAYAM-1 REPRESENTED BY IT'S POWER OF ATTORNEY HOLDER,
MR.K.N.RAJEESH

BY ADV. SRI.K.S.BABU

RESPONDENT(S)/ACCUSED & STATE:

1. RAJAN.D., OZHUKKUPATTUTHARAYIL,
MADATHIL, KARAZHMA.P.O., OCHIRA,
KARUNAGAPPALLY TALUK, PIN-690 526, KOLLAM DISTRICT.

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

R2 BY PUBLIC PROSECUTOR SRI.ABHIJITH LESLIE.
R1 BY ADVS. SRI. K.SHAJ
SRI.SAJJU.S

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
30-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 461 of 2011

Dated this the 30th day of September, 2015

J U D G M E N T

The appellant is the complainant before the Court below. He challenges the order dated 06.02.2010, by which the accused was acquitted on the ground that, the complainant was not present on that day.

2. The complaint was filed under Section 138 of the Negotiable Instruments Act. The proceeding sheet indicates that, the accused appeared and thereafter there were several postings. Ultimately the case was posed for evidence. On 06.02.2010, the complainant was absent and hence invoking the provision under Section 256(1) Cr.P.C., the accused was acquitted. This is assailed by the complainant on the ground that, the Court committed a factual error in holding that, no proof affidavit was filed in spite of various opportunities granted. In fact, the proceeding sheet produced along with the appeal indicates that, by order dated 15.01.2010, the Court has recorded that the complainant had filed proof affidavit with documents. Thereafter, there were 3 postings. On all those posting dates, the complainant was absent. Hence the Court below was perfectly within its jurisdiction to pass appropriate orders, which it deemed

fit. However, it is pertinent to note that, the complainant was represented on all posting dates, in fact, the proof affidavit was also filed. In the above circumstances, it would have been more appropriate had the Court below granted one more opportunity to the complainant to appear and to offer himself for cross examination.

3. Having considered the rival contentions on both sides, I feel that, in the interest of justice, one more opportunity can be granted to the appellant/complainant to prosecute this matter. In the light of the above, the impugned order is liable to be set aside and the matter remanded to the Court below to enable the complainant to appear on the date of appearance to be fixed hereinafter or on such other date which the learned Magistrate may thereafter adjourn and to offer himself for cross examination.

In the result, the appeal is allowed and the impugned order is set aside. Matter is remanded to the Court below for fresh consideration. Both parties shall appear before the Court below on 29.10.2015.

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

P. A. to Judge

Pn