

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

CRL.A.No. 864 of 2014 ()

AGAINST THE JUDGMENT IN ST 4002/2009 of J.M.F.C.-I MUVATTUPUZHA DATED
11-07-2014

AGAINST THE ORDER IN Cr1.L.P. 291/2014 of HIGH COURT OF KERALA DATED
26-08-2014

APPELLANT(S)/COMPLAINANT:

K.V.MATHEW
MANAGING PARTNER, KARITHADATHIL INVESTORS,
PIRAVOM.

BY ADV. SRI.GEORGE SEBASTIAN

RESPONDENT(S)/ACCUSED AND STATE :

1. FR.REJO NIRAPPUKANDOM
ST.JOHN'S JACOBITE CHURCH, SOUTH PARAVOOR
ERNAKULAM DISTRICT - 682 320.

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.

R2 BY PUBLIC PROSECUTOR SMT.M.G.LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
07-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 864 of 2014

Dated this the 7th day of December, 2015

J U D G M E N T

The complainant laid a complaint against the accused on the strength of a cheque for a sum of ₹57,500/- which was dishonoured on presentation. The accused appeared and after few postings, the case stood posted to 11.07.2014. On that day, the complainant was absent. Hence the Court below acquitted the accused invoking Section 255(1) of the Cr.P.C. This is assailed in this appeal.

2. The 1st respondent has been served, but he has not appeared to contest the proceedings. Heard and examined the records.

3. According to the learned counsel, he has been diligently prosecuting the matter. The matter was originally pending before the Judicial First Class Magistrate Court, Muvattupuzha and when the new JFMC Court was constituted, an information was wrongly passed on, that all the cases within the jurisdiction of the Piravom Police Station would be transferred to the newly constituted Court. On the belief that the matter would

not be called in that Court, no representation was made. Though there is nothing to substantiate this, since it remains controverted, I am inclined to believe that. All the more so, since after filing the complaint in 2009 and prosecuting the matter till 2014, it is not likely that the complainant would remain absent and voluntarily invite a dismissal of his own complaint. In the light of the principles laid by the Supreme Court in **Associated Cement Company Ltd. V. Keshvanand (1998 (1) SCC 687)** and considering the above facts, I am inclined to grant one more opportunity to the complainant to prosecute his matter. The impugned order is hence liable to be set aside.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remitted to the Court below for proceeding in accordance with law. Both sides shall appear before the Court below on 19.01.2016. In the event of accused remaining absent, the Court below shall issue fresh summons to him to procure his presence.

**Sd/-
SUNIL THOMAS, JUDGE.**

/true copy/

P. A. to Judge