

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

CRL.A.No. 517 of 2011 ()

AGAINST THE ORDER IN Cr1.L.P. 185/2011 of HIGH COURT OF KERALA DATED
03-03-2011

AGAINST THE ORDER IN CC 61/2010 of THE ADDITIONAL MUNSIFF'S &
JUDICIAL FIRST CLASS MAGISTRATE COURT, IRINJALAKUDA DATED 29-11-2010

APPELLANT(S) /COMPLAINANT:

PYRAMID KURIES(P)LTD,
KUDUKKAVU SHOPPING COMPLEX,
AMBALLUR, REPRESENTED BY MANAGING DIRECTOR
SANTHOSH KUMAR.

BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SHUBHA ABRAHAM

RESPONDENT(S) /STATE AND ACCUSED:

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

2. RAJEEVAN, S/O.BHASKARAN, KURUMBADAN HOUSE,
KANJOOR ROAD, PUDUKKAD.P.O, PIN - 680 301.

R1 BY PUBLIC PROSECUTOR SRI.ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
02-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Pn

SUNIL THOMAS, J.

Crl. Appeal No. 517 of 2011

Dated this the 2nd day of December, 2015

J U D G M E N T

The complainant which is a private limited Company laid a complaint under Section 138 of the Negotiable Instruments Act, on the strength of a dishonoured cheque for a sum of ₹9,565/-. It was taken on file and notice was issued to the accused. After the appearance of the accused, it was posted to 29.11.2010. On that day, the complainant was absent and the counsel was also absent. The Court below invoking Section 256(1) of the Cr.P.C., acquitted the accused. This is challenged in this appeal.

2. Heard the learned counsel for the appellant. The 1st respondent remained absent. Examined the records.

3. It is an admitted fact that on the relevant day, the complainant was absent and he was also not represented. Smt.Chithra Chandrasekharan, the learned counsel for the appellant fairly conceded that, the case stood transferred from the Magistrate Court, wherein it was pending, to the JFMC-II, Irinjalakuda by an administrative order which was not within the knowledge of the appellant. The proceedings sheet of the trial

court indicates that the case was ordered to be transferred by an administrative order dated 20.10.2010 and the case was transferred on 29.10.2010. Prior to that, the case stood originally posted to 27.11.2010. It appears that, it was received by the transferee court on 02.11.2010 and thereafter posted to 27.11.2010, which was the original posting date. On the next two subsequent posting dates, the appellant was not present. The submission of the learned counsel that the appellant was not aware of the proceedings, seems to be evident from the proceedings, since consistently on the two posting dates before the transferee court, there was no representation. The accused was also absent on that day. Hence the learned counsel is justified in contending that the appellant was not aware of the transfer of the case. Even otherwise, it cannot immediately be presumed that after filing a complaint and prosecuting the matter for sometime, one would remain lethargic and invite a dismissal of the complaint.

4. Having regard to these facts, I feel that the impugned order is liable to be set aside to enable the complainant to prosecute his matter.

5. In the result, the appeal is allowed. The impugned order is set aside and the matter is remanded to the Court below to enable the complainant to prosecute the matter. Both sides shall appear before the court on 14.01.2016. In the event of the accused remaining absent, fresh summons shall be issued from the trial court to procure his presence.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn