

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

CRL.A.No. 920 of 2014 () IN Cr1.L.P..154/2014

AGAINST THE JUDGMENT IN ST 2518/2011 of JUDICIAL FIRST CLASS
MAGISTRATE, PARAVOOR DATED 11.04.2014

AGAINST THE ORDER IN Cr1.L.P. 154/2014 of HIGH COURT OF KERALA DATED
18-08-2014

APPELLANT/COMPLAINANT:

SASIDHARAN UNNITHAN
S/O.NARAYANA PILLAI, 'JYOTHIS', THAZHAM
CHATHANNOOR (P.O.), KOLLAM.

BY ADV. SRI.K.V.ANIL KUMAR

RESPONDENTS/ACCUSED AND STATE:

1. K. G. VINOD
KOCHU VEEDU (LEKSHMI BHAVAN), OPP. URBAN CO-OP. BANK
THAZHAM, CHATHANNOOR (P.O.), KOLLAM.

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

R1 BY ADV. SRI.P.V.DILEEP
BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.920 of 2014

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Dated this the 24th day of November, 2015

JUDGMENT

The appellant is the complainant in S.T.No.2518 of 2011 under Section 138 of the Negotiable Instruments Act on the basis of a dishonoured cheque for a sum of Rs.3,00,000/-. Pursuant to the complaint filed, the accused appeared and there were few postings for evidence. Ultimately, the case was adjourned as last chance to 11.04.2014. On that day, the complainant was absent. There was no representation also. Consequently, the court below invoking Section 256(1) of the Cr.P.C. acquitted the accused. This is challenged in this appeal.

2. Even though notice was served on the first respondent, he did not appear and contest the proceedings. Since the appeal itself can be disposed of on the basis of the available records, LCR was not called for.

3. It is an admitted fact that the complainant and his counsel remained absent on 11.04.2014, on which day, admittedly, the case stood posted for evidence. The explanation offered in the appeal memorandum is that the advocate clerk had wrongly taken

down the date of posting as 21.04.2014 instead of 11.04.2014. However, I am not inclined to accept this explanation for the simple reason that the copy application is seen filed on 11.04.2014 itself. It clearly shows that the reason for the absence of the complainant and his counsel on that day was something else and that, he came to know about the acquittal of the accused on the very same day. However, it is pertinent to note that the complaint was filed in 2011 and the complainant had been prosecuting it till 2014. The amount involved is also very substantial. Having regard to these facts, it cannot easily be presumed that the complainant would voluntarily remain absent and invite a dismissal of his complaint. Hence a lenient view is liable to be taken. Though the court below was legally competent in passing such an order, it would have been more justifiable, had one more reasonable opportunity granted to the complainant to prosecute the matter. Having regard to this, the impugned order is liable to be set aside.

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 his case further by granting one more opportunity. Both sides shall appear before the court

below on 06.01.2016. In the event of the first respondent/accused remaining absent, the court below shall issue fresh summons to the accused to ensure his appearance.

Sd/-
SUNIL THOMAS
Judge

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True Copy /

P.A to Judge