

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

CRL.A.No. 539 of 2011 ()

AGAINST THE ORDER IN Cr1.L.P. 212/2011 of HIGH COURT OF KERALA DATED
21-03-2011

AGAINST THE ORDER IN ST 36/2009 of JUDICIAL FIRST CLASS MAGISTRATE-II,
VADAKARA DATED 27-01-2010

APPELLANT/COMPLAINANT:

CHANDRAN P., S/o.CHANDHU, AGED 52 YEARS,
RESIDING AT CHERIYA KUNNUMMEL HOUSE, P.O.CHORODE
PIN-673106, CHORODE VILLAGE, VATAKARA TALUK.

BY ADV. SRI.ZUBAIR PULIKKOOL

RESPONDENTS/ACCUSED & STATE:

1. K.GOPI, S/O.CHANTHU, AGED 49 YEARS,
RESIDING AT KOROTH HOUSE, CHERUSSERY ROAD, P.O.PUTHUR
PIN-673104, NADAKKUTHANA VILLAGE, PUTHUR DESOM
VATAKARA TALUK.

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

R1 BY ADV. SRI.V.V.SURESH
R1 BY ADV. SRI.C.BHASKARAN
R2 BY PUBLIC PROSECUTOR: SMT. M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.539 of 2011

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Dated this the 04th day of December, 2015

JUDGMENT

This appeal arises from the order dated 27.01.2010 of the Judicial First Class Magistrate-II, Vadakara in a proceeding under Section 138 of the Negotiable Instruments Act. The complainant is the appellant. It arose from the dishonour of a cheque for a sum of Rs.60,000/-. Pursuant to the summons issued in the case, the accused appeared and the case was being adjourned thereafter. Ultimately, it was posted to 27.01.2010. On that day, the complainant and his counsel were absent. The court below noted that there was a specific direction to the complainant to be present for evidence. Consequently, complaint was dismissed and the accused was acquitted under Section 256(1) of Cr.P.C. The complainant has come up in appeal.

2. Heard both sides and perused the records.

3. Learned counsel for the appellant contended that the case was posted as a last chance and that, neither the counsel nor the complainant was present on that day. The absence was attributed to the fact that the matter was entrusted to a junior

counsel, who could not make an effective representation. The absence of the party on that day is also not satisfactorily explained. Hence, the court below cannot be found fault with, for having passed an order within its jurisdictional limits.

4. However, the complaint was laid in the year 2008. It appears that it was transferred to the present Court in 2009 and renumbered. Till it was dismissed in January 2010, the complainant has been prosecuting it diligently. Taking into consideration that fact, I feel that interest of justice demands one more opportunity to be granted to the appellant to prosecute his matter. 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 remanded to the court below to enable the complainant to prosecute his matter. Both sides shall appear before the court below on 18.01.2016.

Sd/-

SUNIL THOMAS
Judge

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True Copy /

P.A to Judge