

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

CRL.A.No. 675 of 2011 ()

AGAINST THE ORDER IN Cr1.L.P. 550/2007 of HIGH COURT OF KERALA DATED
16-08-2007

AGAINST THE ORDER IN CC 79/2005 of JUDICIAL FIRST CLASS MAGISTRATE
COURT-V,KOZHIKODE DATED 28-04-2007

APPELLANT/COMPLAINANT:

THEKKADATHU ARUMUGHAN,S/O.MUNDAN,
AGED 71 YEARS, RESIDING AT "PADICKAL THAZHAM HOUSE"
MANNUR, KOZHIKODE.

BY ADV. SRI.R.SUDHISH

RESPONDENT/ACCUSED & STATE:

1. K.JOTHEENDRAN,S/O.VELAYUDHAN,
AGED 51 YEARS, RESIDING AT "KIZHAKKATTIL HOUSE"
BEHIND RAILWAY STATION(KADALUNDI), KADALUNDI.P.O
KOZHIKODE.

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

R1 BY ADV. SRI.K.M.FIROZ

R1 BY ADV. SMT.M.SHAJNA

BY PUBLIC PROSECUTOR: SRI ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.675 of 2011

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Dated this the 26th day of October, 2015

JUDGMENT

Appellant is the complainant in a proceeding under Section 138 of the Negotiable Instruments Act on the strength of a dishonoured cheque for a sum of Rs.50,000/-. The accused appeared and after several postings, the case was posted to 28.04.2007. The matter was posted for evidence on that day. The complainant was absent and hence, on the ground that since the matter was specifically posted for the complainant's evidence, the complaint was dismissed by the learned magistrate and the accused was acquitted invoking Section 256(1) of the Cr.P.C. This order is under challenge in this appeal.

2. Heard both sides and examined the records.

3. A copy of the diary extract is produced as Annexure-B. It shows that the complaint was filed on 28.02.2005, on which day, sworn statement was recorded. Thereafter, there were several postings and the accused appeared on 22.09.2005. On 28.04.2007, the case stood posted for evidence. The proceeding itself indicate that on 29.03.2007, there was a specific direction that both parties

shall appear on the next day for evidence. However, on 28.04.2007, the complainant and accused were absent. The court below on a reasoning that the matter was posted on that day for evidence dismissed the complaint and consequently, acquitted the accused.

4. The diary extract eminently shows that the complainant was diligently prosecuting the matter. On the previous two postings, complainant was personally present. On whatever occasions he was personally not present, he has been effectively represented. In the appeal memorandum, it is stated that on 28.04.2007, complainant was laid up and an application was filed for excusing his absence. It is seen from the impugned order itself that complainant sought an adjournment. In the above circumstances, the stand taken by the court below on the ground that the matter was posted specifically for recording evidence appears to be too technical and in the interest of justice, court could have granted one more opportunity.

5. In the light of the above circumstances, the impugned order is not legally sustainable and is liable to be set aside. The matter is remanded to the court below for fresh consideration to enable the complainant to tender evidence.

In the result, the appeal is allowed. Impugned order is set aside and the matter is remanded to the court below. Both sides shall appear before the court below on 09.12.2015. The court below shall thereafter give a reasonable opportunity to the complainant to tender his evidence.

Sd/-
SUNIL THOMAS
Judge

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True Copy /

P.A to Judge