

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

CRL.A.No. 1210 of 2012 (A)

AGAINST THE ORDER IN Cr1.L.P. 552/2012 of HIGH COURT OF KERALA DATED
26.09.2012

AGAINST THE ORDER IN ST 336/2006 of JUDICIAL FIRST CLASS MAGISTRATE-VI,
TRIVANDRUM DATED 16.01.2009

APPELLANT/COMPLAINANT:

PRAKASH
S/O.VENU, PANAVALAVEEDU, JAY NAGAR
MCPO, THIRUVANANTHAPURAM.

BY ADV. SRI.SUMAN CHAKRAVARTHY

RESPONDENT/ACCUSED AND STATE:

1. B.SARATH CHANDRAN
S/O.BHASKARA PILLAI, SREEKRISHNA VILASOM
KARUKULANGARA, KALLUVATHUKKAL, VARINJAM CHERI
KALLUVATHUKKAL, KOLLAM 691 134.

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

BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 29-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.1210 of 2012

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Dated this the 29th day of October, 2015

JUDGMENT

The appellant laid a complaint under Section 138 of the Negotiable Instruments Act on the strength of a dishonoured cheque for a sum of Rs.1,50,000/-. Pending the proceeding, warrant was issued to the accused and the case stood posted to 16.01.2009. On that day, the complainant and his counsel were absent and the court below by the impugned order acquitted the accused invoking Section 256(1) of the Cr.P.C. This is impugned in this appeal.

2. Heard the appellant. First respondent has not appeared in spite of service of notice.

3. The contention of the learned counsel for the appellant was that the posting date was wrongly taken down as 16.02.2009 instead of 16.01.2009. I am not inclined to accept this contention, since copy application is seen filed on 21.01.2009 which negatives the contention.

4. Learned counsel for the appellant relying on the decisions reported in **Subhash B. Ravu Vs. Varghese (2010(4) KLT 535)** and **Joseph Vs. State of Kerala (2010(4) KLT 697)** contended that the court below was not legally justified in dismissing the complaint invoking Section 256 of the Cr.P.C., when the matter stood posted for the appearance of the accused. There is nothing at present to indicate that the accused had in fact appeared and thereafter, jumped the bail.

5. It is pertinent to note that the complaint was filed some time in 2004. The complainant has been prosecuting the matter till it was ultimately dismissed on 16.01.2009. This itself sufficiently indicates that the complainant was diligently prosecuting the matter. Considering these facts and the further fact that the amount involved is substantial, the complainant would not have purposefully refrained from appearing before the Court and invite an adverse order of dismissal of the complaint. Having regard to this aspect, I feel that one more opportunity can be granted to the complainant in the interest of justice.

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 pursue the complaint. Both sides shall appear before the court below on 15.12.2015. If the accused remain absent on that day, court below shall initiate proceedings to issue summons to him to procure his presence.

Sd/-
SUNIL THOMAS
Judge

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