

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. 753 of 2011 ( )  
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AGAINST THE ORDER IN Cr1.L.P. 137/2011 of HIGH COURT OF KERALA DATED  
22-02-2011

AGAINST THE JUDGMENT IN ST 2321/2009 of JUDICIAL FIRST CLASS MAGISTRATE  
COURT-II (MOBILE), KOTTAYAM DATED 08-02-2010

APPELLANT/COMPLAINANT:  
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M/S.SREE GOKULAM CHIT & FINANCE CO.PVT  
LTD, WITH IT'S CENTRAL OFFICE AT NO.66, ARCOT ROAD  
KODAMPAKAM, CHENNAI-600024, HAVING ONE OF IT'S  
BRANCH OFFICE AT PRAKKATTU BUILDING, 1ST FLOOR  
CENTRAL JUNCTION, KOTTAYAM-1, REP;BY ITS POWER OF  
ATTORNEY HOLDER, MR K N REJEESH

BY ADVS.SRI.K.S.BABU  
SMT.N.SUDHA

RESPONDENTS/ACCUSED AND STATE:  
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1. JYOTHI.P.G,W/O.GANAPATHY DAS,  
THAIPARAMBIL, CANAL ROAD, ALAPPUZHA  
PIN-688007.

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

R 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.753 of 2011**

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Dated this the 26<sup>th</sup> day of October, 2015

**JUDGMENT**

The appellant herein 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.10,50,000/-. After recording his sworn statement, summons was issued to the accused who appeared thereafter and the case stood posted to 08.02.2010 with specific direction on the previous date of posting, to file a proof affidavit as last chance. On 08.02.2010, the complainant and his counsel were absent. The court below by the impugned order dismissed the complaint and acquitted the accused invoking Section 256(1) of the Cr.P.C. This is under challenge in this proceeding.

2. Notice was served on the first respondent but has not appeared. Though records were called for, in the light of the copy of the diary extract produced by the appellant along with appeal memorandum, I feel that the matter can be decided on the basis of the available records even.

3. Evidently, the sworn statement of the complainant was recorded and was issued to the accused. Since he did not appear, non-bailable warrant was issued to the accused and he surrendered

on 15.01.2010. Thereafter, the case was posted to 23.01.2010 with a specific direction to file proof affidavit. On that day, it was again adjourned to 08.02.2010 since the complainant and accused were absent and the proof affidavit was not filed, there was a specific direction that the proof affidavit shall be filed. However, on 08.02.2010, admittedly complainant was absent and his counsel was also absent. Hence, legally the court below was justified in passing an appropriate order. However, absence of the complainant and his counsel on 08.02.2010 is sought to be explained on the ground that the date of posting was wrongly taken down by the advocate clerk as 18.02.2010 instead on 08.02.2010. I am inclined to believe this version for the reason that the copy application to the diary extract shows that it was applied on 18.02.2010. One could not have imagined by filing a copy application on 08.02.2010 to set up an excuse that the date was wrongly noted as 18.02.2010 instead of 08.02.2010, as justifiably contended by the learned counsel for the appellant. This contention is also not controverted by the first respondent who remained absent. Further the amount involved is very huge and it cannot reasonably be expected, after having filed the complaint in 2009 and prosecuted the matter till 08.02.2010, one would remain

lethargic and negligent purposefully. Considering these facts, it is more justifiable, had the court below granted one more opportunity to the appellant to prosecute the matter.

4. Having considered the above, I feel that one more opportunity could be granted to the appellant to prosecute the matter. The appeal is hence liable to be allowed and the impugned order 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. Both sides shall appear before the court below on 10.12.2015. In the event of the accused remaining absent before the court below on the above date of posting, the court below shall issue fresh summons to the accused to procure his presence.

Sd/-  
**SUNIL THOMAS**  
**Judge**

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True Copy /

P.A to Judge