

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

CRL.A.No. 756 of 2011 ()

AGAINST THE ORDER/JUDGMENT IN CrI.L.P. 136/2011 of HIGH COURT OF KERALA
DATED 22-02-2011

AGAINST THE ORDER IN CC 79/2009 of JUDICIAL FIRST CLASS MAGISTRATE
COURT-III, KOTTARAKAKARA DATED 15-01-2010

APPELLANT/COMPLAINANT:

M/S.SREE GOKULAM CHIT & FINANCE CO.(P)
LTD, ALPHONSA COMMERCIAL COMPLEX, MARKET JUNCTION
KOTTARAKARA REPRESENTED BY IT'S AUTHORISED
REPRESENTATIVE, S.PRADEEP, LEGAL CLERK
MOOLATHARA, THOPPIL, KANTRAMKANI
MUNDRO ISLAND.P.O, KOLLAM

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

RESPONDENTS/ACCUSED AND STATE:

1. PRASAD.T,S/O.THANKAPPAN,NELLIVILA VEEDU,
NEELESWARAM.P.O, PIN-691506, KOTTARAKARA.

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 16-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.756 of 2011

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Dated this the 16th day of October, 2015

JUDGMENT

The complainant in a proceeding under Section 138 of the Negotiable Instruments Act is the appellant herein.

2. The complaint was laid alleging that a cheque for a sum of Rs.84,532/- issued by the accused towards the discharge of a legally recoverable debt was dishonoured. After the appearance of the accused, it was posted for evidence to 15.01.2010. On that day, the complainant was absent. The court below acquitted the accused on a reasoning that the case was posted for giving evidence as last chance and no application was filed by the complainant stating the reasons for absence. This is assailed in this appeal.

3. Notice was issued from this Court to the first respondent, who was served but remained absent. Heard the learned counsel for the appellant and examined the records.

4. Admittedly, the case was posted on 15.01.2010, as last chance for giving evidence. It is further not in dispute that the complainant was absent. However, absence is explained on a ground that complainant could not reach the Court in time. On a belief that the complainant would be present in the Court, the

counsel had not filed an application to excuse his absence. This explanation does not appear to be completely convincing. The court below in the above circumstances cannot be found fault with acquitting the accused. However, considering the fact that a substantial amount is involved and that, from the date of filing the complaint which is 26.06.2007, till the date of its dismissal on 15.01.2010, evidently, the complainant has been prosecuting the matter, I feel that one more opportunity can be granted to the appellant in the interest of justice.

In the light of the above, appeal is allowed. The impugned order is set aside and the matter is remanded to the court below for a fresh consideration after enabling the complainant to adduce evidence. Both sides shall appear before the court below on 07.12.2015. In case the accused remains absent on the date of appearance, the court below shall issue fresh summons to him to procure his presence.

Sd/-
SUNIL THOMAS
Judge

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True Copy /

P.A to Judge