

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

CRL.A.No. 852 of 2011 ( )

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AGAINST THE ORDER IN CrI.L.P. 314/2011 of HIGH COURT OF KERALA  
DATED 23-05-2011

AGAINST THE ORDER IN ST 859/2006 of JUDICIAL FIRST CLASS MAGISTRATE  
COURT-III, THRISSUR DATED 07-11-2009

APPELLANT/COMPLAINANT:

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KRISHNAKRIPA CHITS (INDIA) PVT.LTD.  
UNITED SHOPING COMPLEX, POOTHOLE  
THRISSUR, REP. BY ITS AUTHORIZED PERSON  
P UNNIKRISHNAN S/o.LATE NARAYANAN NAIR,  
PULIYAMGOTE HOUSE, PULLAZHY P O  
THRISSUR

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS/ ACCUSED AND STATE OF KERALA

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1. RAMADAS M R  
S/o.RAMAN, MODANTHELY HOUSE  
MANGATTUKARA, KANDASAMKADAVU P O  
THRISSUR
2. STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR  
HIGH COURT OF KERALA AT ERNAKULAM

R1 BY ADV. SRI.V.BINOY RAM  
R1 BY ADV. SMT.SAJITHA P.SOMAN  
R2 BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07-10-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**SUNIL THOMAS, J.**

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**Crl.A.No.852 of 2011**

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Dated this the 7<sup>th</sup> day of October, 2015

**JUDGMENT**

The complainant in a proceeding under Section 138 of the Negotiable Instruments Act is the appellant herein. He initiated proceedings on the basis of a dishonoured cheque for a sum of Rs,1,09,475/-. After the appearance of the accused, the case was posted to 07.11.2009. On that day, there was no appearance for the appellant/complainant and the accused was acquitted by the learned magistrate invoking Section 256 of the Cr.P.C. Aggrieved by the above order, the complainant has preferred this appeal.

2. Heard both sides and examined the records.

3. It is an admitted fact that the complainant remained absent on the date of posing on 07.11.2009. The reason stated by the appellant is that there was a mistake while recording the date of posting. It is not specifically revealed as to how the mistake had happened and the date on which it was posted. However, considering the fact that the complaint was filed sometime in the year 2006 and the matter was being prosecuted by him till 2009, it

cannot reasonably be expected that the complainant would remain lethargic and negligent to invite dismissal of his complaint. Necessarily, the explanation given by the learned counsel for the appellant in this regard is only to be believed. I also feel that, it would be ideal, if the parties are relegated for trial on merits. Hence, the impugned order is liable to be set aside.

In the result, the appeal is allowed and the impugned order is set aside. The matter is remanded back to the court below to enable the complainant to have one last opportunity to prosecute his case. Both sides shall appear before the court below on 12.11.2015. On that day, the complainant shall be present and offer himself for evidence. The court below shall either record evidence on that day or on any other convenient date to which it may adjourn enabling the parties to adduce evidence. Thereafter, the court below shall pass appropriate orders in accordance with law.

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

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