

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

CRL.A.No. 1335 of 2012 ()

AGAINST THE ORDER IN CC 82/2010 of ADDITIONAL MUNSIF AND FIRST CLASS
MAGISTRTE, IRINJALAKUDA DATED 28-01-2011

AGAINST THE ORDER IN Cr1.L.P. 588/2012 of HIGH COURT OF KERALA DATED
10-10-2012

PETITIONER/COMPLAINANT:

SURESH T.V.
S/O.VIJAYAN, THAYAVALLIYIL HOUSE, PADIYOOR P.O.
IRINJALAKUDA

BY ADVS.SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN

RESPONDENTS/ACCUSED & STATE:

1. KOMALAM
W/O.N.K.AYYAPPAN, MUTHARAVALLAPPIL HOUSE, P.O.ANCHERY
PALAKUZH, THRISSUR

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

R1 BY ADV. SRI.V.BINOY RAM
BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.1335 of 2012

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Dated this the 04th day of December, 2015

JUDGMENT

The appellant herein challenges the order dated 28.01.2011 in C.C.No.82 of 2010 of the Additional Munsiff and First Class Magistrate Court, Irinjalakkuda.

2. Appellant as the complainant initiated proceeding under Section 138 of the Negotiable Instruments Act on the strength of a cheque for a sum of Rs.1,00,000/-. Pursuant to the summons, the accused appeared and the case was being adjourned from one date to another. Ultimately, it stood posted to 28.01.2011. On that day, complainant and accused were absent. The court below took a view that though ample opportunity has been given to the complainant to adduce evidence and in spite of that, he has not turned up, acquitted the accused invoking Section 256(1) of Cr.P.C. This has resulted in this appeal.

3. Heard both sides and examined the records.

4. Learned counsel for the appellant contended that though he was personally not present on 28.01.2011, he was effectively represented by the counsel. The explanation offered for

the absence of the complainant is that he was suffering from various ailments. The appeal memorandum does not disclose details of his ailment and whether it was of such nature that it prevented him from personally appearing before the Court. However, the fact that the complaint was filed in 2010 and was being prosecuted till 2011 cannot be forgotten. However, even though the complainant was absent, it appears from the impugned order itself that his counsel was present. The amount involved is Rs.1,00,000/-. Having regard to these facts, I feel that the appellant is entitled for the benefit of one more opportunity being granted to enable him to prosecute his case. Hence, the impugned order is liable to be 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 matter. Both sides shall appear before the court below on 18.01.2016.

Sd/-
SUNIL THOMAS
Judge

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True Copy /

P.A to Judge