

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

CRL.A.No. 1258 of 2014 (A)

AGAINST THE JUDGMENT IN ST 1531/2013 of JUDICIAL FIRST CLASS
MAGISTRATE-II, PERINTHALMANNA DATED

AGAINST THE ORDER IN Cr1.L.P. 433/2014 of HIGH COURT OF KERALA DATED
28-11-2014

APPELLANT/COMPLAINANT:

NAJEEB P.
S/O.MUHAMMED @ BAPUTTY, PATHIRAMANNA HOUSE
CHEMMANIYODU, VENGOOR
PERINTHALMANNA TALUK THROUGH THE POWER
OF ATTORNEY HOLDER-ALAVIKUTTY
S/O.MOIDEENKUTTY, MANAKKADAVAN HOUSE, VEEMBOOR
MANJERI, MALAPPURAM DISTRICT

BY ADV. SRI.BABU S. NAIR

RESPONDENTS/STATE & ACCUSED:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, EERNAKULAM, KOCHI 682 031

2. MOOSA
S/O. ALIKUTTY MUSLIYAR, KUNNATH HOUSE, TIRURKKAD
PERINTHALMANNA TALUK, MALAPPURAM DISTRICT, PIN 679 351

R1 BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.1258 of 2014

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Dated this the 3rd day of November, 2015

JUDGMENT

The appellant as the complainant had laid a complaint invoking Section 138 of the Negotiable Instruments Act on the strength of a dishonoured cheque. The complaint was filed through the father of the complainant as the power of attorney holder. After the case was taken on file, it was later transferred to Judicial First Class Magistrate Court-II, Perinthalmanna. There were few postings and ultimately, the case stood posted to 13.10.2014. On that day, the complainant was absent. On a ground that the case was posted as last chance for evidence and was being adjourned on the previous few postings to give sufficient opportunity to the complainant and that he has not led evidence, the accused was acquitted invoking Section 256(1) of the Cr.P.C. This is assailed in this appeal.

2. Heard the learned counsel for the appellant. Respondent, though served, has not appeared. Perused the records.

3. It is an admitted fact that the case originally stood posted to 08.10.2014 for evidence and thereafter, adjourned to

10.10.2014. On that day, it was again adjourned to 13.10.2014, on which day, the accused was acquitted. Evidently, the complainant was absent on all these three posting dates. Learned counsel for the appellant contended that since the complainant was abroad and the power of attorney holder, the father was aged, he had filed an application seeking two week's time to enable the complainant to return to Kerala and tender the evidence. It was also submitted that two other similar cases had also been filed against the same accused which were also pending in the same Court. In each of the complaints, separate applications were filed for joint trial of all the three cases together. A certified copy of the application filed before the court below was placed before this Court. However, without passing an order on these applications for joint trial, the Court proceeded to dismiss the complaint.

4. Annexure-A, the diary extract shows that the court below has not passed a considered order on that application. Further, rather than rushing through the evidence, the Court ought to have passed a considered order on the joint trial application which would have enabled the complainant to get

ready to tender evidence. In the light of the above, impugned order passed by the court below is not legally sustainable and is liable to be set aside.

In the result, the appeal is allowed. Impugned order is set aside and the matter is remanded to the court below for fresh consideration. If the joint trial application stands dismissed as a consequence to dismissal of complaint, the application shall also stand restored and the Court shall consider the joint trial application on merits. The Court shall thereafter give a reasonable opportunity to the complainant to tender the evidence. Both sides shall appear before the court below on 16.12.2015. In the event of the accused remaining absent, court below shall issue fresh summons to the accused to procure his presence.

Sd/-
SUNIL THOMAS
Judge

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