

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

CRL.A.No. 1266 of 2014 () IN CrL.L.P..355/2014

AGAINST THE ORDER IN CC 3557/2012 of JUDICIAL FIRST CLASS MAGISTRATE-I,
CHALAKUDY DATED 01-08-2014

AGAINST THE ORDER IN CrL.L.P. 355/2014 of HIGH COURT OF KERALA DATED
23-10-2014

APPELLANT/COMPLAINANT:

M/S. JAYALAKSHMI BANKERS
CHENNAMANGALAM
REPRESENTED BY ITS MANAGING PARTNER SRI GOPI
AGED 65 YEARS, S/O.KELAN, PUTHUPARAMBIL HOUSE, CHERAI

BY ADVS.SMT.SAIRA PHIROZ
SRI.S.JIJI

RESPONDENTS/RESPONDENTS/ACCUSED & STATE:

1. UMMER, AGED 40 YEARS
S/O.KUNJUMHAMMED, NALAKATH HOUSE, NAYATTUKUNDU
CHOKKANA POST, PADY - 671 123

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

BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.1266 of 2014

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Dated this the 24th day of November, 2015

JUDGMENT

The complainant is the managing partner of a banking company which filed a proceeding under Section 138 of the Negotiable Instruments Act on the strength of a cheque for a sum of Rs.23,450/-. Notice was issued to the first respondent/accused who appeared and was granted bail. Ultimately, the case was posted to 01.08.2014, on which day, neither the complainant nor the counsel was present. Hence, the court below by the impugned order acquitted the accused invoking Section 256(1) of Cr.P.C. This is challenged in this appeal.

2. Notice was served on the first respondent who remained absent. Since it appears that the appeal itself can be disposed of on the basis of the available records, records were not called for from the trial court.

3. It is an admitted fact that the appellant remained absent on 01.08.2014, on which day, the case stood posted. There was no representation also. However, learned counsel referred to paragraph 5 of the appeal memorandum to contend that though

the case stood posted to 01.08.2014, the advocate clerk noted down in the diary as 11.08.2014, by an inadvertent mistake. Thereafter, the case was posted to 01.08.2014 and dismissed. I am not convinced about this argument for the simple reason that had the date been taken down wrongly as 11.08.2014, normally the counsel would have enquired about the case on that day or immediately thereafter. However, in the case at hand, the copy application was filed on 04.08.2011, which is contrary to his own pleading. No reason is attributed to the absence of the counsel also. In that premise, court below cannot be found fault for having acquitted the accused invoking Section 256(1) of Cr.P.C. However, it cannot be forgotten that the complaint was filed in the year 2012. Thereafter the complainant had been prosecuting it, till atleast the last date of posting on 01.08.2014. It cannot easily be presumed that the complainant, after having prosecuted the matter for quite sometime would voluntarily remain absent and invite an adverse order. Hence, I feel that one more reasonable opportunity can be granted to the appellant to pursue his case. In the light of the above, 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 for enabling the complainant to prosecute his matter as a last chance. Both sides shall appear before the court below on 05.01.2016. However, in the event of the accused remaining absent, court below shall issue fresh summons to procure his presence.

Sd/-

SUNIL THOMAS
Judge

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True Copy /

P.A to Judge