

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

CRL.A.No. 868 of 2011 ()

AGAINST THE ORDER IN Cr1.L.P. 246/2011 of HIGH COURT OF KERALA DATED
23.03.2011

AGAINST THE ORDER IN CC 1050/2008 of JUDICIAL FIRST CLASS MAGISTRATE-
I, THRISSUR DATED 01.02.2011

APPELLANT/COMPLAINANT:

SEBI P.R, S/O.RAPPAI, PULIKKODAN HOUSE
KURIACHIRA, THRISSUR DISTRICT.

BY ADV. SRI.P.SANTHOSH (PODUVAL)

RESPONDENTS/ACCUSED & STATE:

1. MARTIN JOY, MONGALI HOUSE
MANJAPRA P.O., PULLATHAN KAVALA PIN 683 581, ERNAKULAM.

2. THE STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR , HIGH COURT OF KERALA
ERNAKULAM-682031

BY PUBLIC PROSECUTOR:SRI ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.868 of 2011

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Dated this the 17th day of November, 2015

JUDGMENT

The complainant laid a complaint invoking Section 138 of the Negotiable Instruments Act on the strength of a dishonoured cheque for a sum of Rs.3,00,000/-. The accused appeared pursuant to the summons and after several postings, it was ultimately posted to 01.02.2011 for evidence. On that day, complainant and the accused were absent. The complainant was represented through the counsel. Learned magistrate on a reasoning that the case was posted for evidence as no further time and that since the complainant has not been appearing before the Court, the trial could not be proceeded with, acquitted the accused invoking Section 256(1) of the Cr.P.C.

2. This order is impugned in this appeal. In spite of service of notice on the first respondent, he has not appeared to contest the proceedings. Since the appeal itself can be disposed of on the basis of the admitted facts, it is accordingly heard and disposed of.

3. The impugned order itself shows that the complaint was

filed on 27.06.2008 on the basis of a cheque for a sum of Rs.3,00,000/-. Learned counsel for the appellant relying on paragraph 3 of the appeal memorandum, contended that the petitioner was present on almost all posting dates and in fact on 10.01.2011, the proof affidavit was also filed with a copy to the accused. On 01.02.2011, the complainant could not appear since he was suffering from severe lower back pain medically known as "Guillain Barre Syndrome" for which he has been undergoing treatment for the past several years. This fact remains uncontroverted in the absence of the first respondent.

4. Though the complainant was absent on the relevant day, he was effectively represented by the counsel. The amount involved is substantial. Complainant has been prosecuting the matter from 2008 onwards. In the light of the above circumstances, it cannot reasonably be presumed that the complainant would remain lethargic voluntarily and invite a dismissal of the complaint, except for valid reasons. This has also to be appreciated in the background that the proof affidavit was also filed. Considering these facts, the Court ought to have granted one more opportunity to the complainant to prosecute the

matter. To that extent, impugned order appears to be legally unsustainable.

In the result, the appeal is allowed. The impugned order is set aside. The matter is remanded to the court below for enabling the complainant to prosecute the matter. Both sides shall appear before the court below on 31.12.2015. In the event of the accused remaining absent, learned magistrate shall issue fresh summons to the accused to procure the presence.

Sd/-

SUNIL THOMAS
Judge

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True Copy /

P.A to Judge