

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

CRL.A.No. 1271 of 2014 ()

AGAINST THE ORDER IN CC 5385/2012 of J.M.F.C., CHALAKUDY DATED
19-09-2014

AGAINST THE ORDER IN Cr1.L.P. 390/2014 of HIGH COURT OF KERALA DATED
11-11-2014

APPELLANT(S)/COMPLAINANT:

MINI SUNNI, AGED 36,
W/O SUNNI, VANCHIPPURA HOUSE, EAST CHALAKKUDY VILLAGE,
CHALAKUDY TALUK, THRISSUR DISTRICT

BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.N.L.BITTO

RESPONDENT(S)/STATE/COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERANKULAM 682031

2. PREMJIITH LAL,
S/O PURUSHOTHAMAN
THERATTIL (ERIMMEL THERATTIL) HOUSE,
KUNNAPPILLY DESAM, MELOOR VILAGE
CHALAKUDY TALUK 680001

R1 BY PUBLIC PROSECUTOR SRI.ABHIJITH LESLIE.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
09-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 1271 of 2014

Dated this the 9th day of December, 2015

J U D G M E N T

The appellant laid a private complaint invoking Section 138 of the Negotiable Instruments Act on the strength of a dishonoured cheque for a sum of ₹3,40,000/-, alleged to have been issued by the 2nd respondent towards the discharge of a legally enforceable debt. The accused appeared and after few postings, the case stood posted to 19.09.2014, for evidence. On that day, the complainant was absent. The learned Magistrate held that the case was being posted for evidence from 06.11.2012 onwards and that in spite of repeated postings, the complainant failed to appear and adduce evidence. The Court further held that the complainant was playing dilatory tactics so as to harass the accused. Consequently, the accused was acquitted under Section 256(1) of the Cr.P.C. This is challenged by the appellant in this proceeding.

2. Notice was served on the 2nd respondent who remained absent.

3. Admittedly, the case stood posted to 19.09.2014 for

recording evidence. It is further not in dispute that the complainant was absent. However, it appears from the impugned order itself that an application to condone the absence of the accused was filed. The learned counsel for the appellant submitted that it was filed on medical grounds. The Court below however held that no valid reason was stated for condoning his absence and consequently concluded that the complainant was adopting dilatory tactics. It cannot be forgotten even for a moment that there was no material before the Court below to hold that the reason stated in the absent application was false. This has to be appreciated in the back ground that the complaint was filed sometime in the year 2011 and thereafter was being prosecuted by the complainant till it reached the ultimate conclusion on 19.09.2014. The amount involved is also very huge. It may be true that the complainant was absent on the previous posting dates, that by itself does not lead to an irresistible conclusion that the absence of the complainant, though may be on a justifiable cause, was as a dilatory tactic. I feel that this observation of the Court below is not sustainable and is liable to be set aside. Consequently, the impugned order is

also liable to be set aside.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remitted to the Court below to enable the complainant to appear before the Court below and to prosecute the matter. Both sides shall appear before the Court below on 21.01.2016. In the event of the 2nd respondent/accused remaining absent, the Court below shall issue fresh summons to procure his presence.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn