

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

CRL.A.No. 1387 of 2012 ()

AGAINST THE JUDGMENT IN CC 226/2007 of J.M.F.C., TIRUR DATED
18-01-2008

AGAINST THE ORDER IN Cr1.L.P. 432/2008 of HIGH COURT OF KERALA DATED
06-02-2009

APPELLANT(S)/APPELLANT / COMPLAINANT:-:

ANIRUDHAN T.P.,
S/O.NARAYANAN, THAZHATHEPURACKAL HOUSE, MUTTANNOOR,
MANGALAM, PURATHUR, TIRUR TALUK
MALAPPURAM DISTRICT.

BY ADV. SRI.HARISH R. MENON

RESPONDENT(S)/ACCUSED & STATE OF KERALA :

1. SASI,
S/O.VELAYUDHAN, RESIDING AT KANNAMKULANGARA HOUSE
EDAPPAL, MALAPPURAM DISTRICT, PIN - 679 576.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
ADVOCATE GENERAL OFFICE, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI.ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
02-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CRL.A.No. 1387 of 2012 ()

APPENDIX

PETITIONERS' EXHIBITS

ANNEXURE A THE CERTIFIED COPY OF THE ORDER SHEET IN
C.C.NO.226/2007 ON THE FILE OF JFCM, TIRUR.

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P. A. TO JUDGE

Pn

SUNIL THOMAS, J.

Crl. Appeal No. 1387 of 2012

Dated this the 2nd day of December, 2015

J U D G M E N T

The appellant was the complainant in a case instituted against the accused under Sections 279 and 338 of IPC. Cognizance was taken by the learned Magistrate and thereafter the case was posted on several other dates. Ultimately it was posted to 18.01.2008. On that day, the complainant and the counsel were absent. Consequently, the Court below by the impugned order invoking Section 256(1) Cr.P.C., acquitted the accused. This is challenged in this appeal.

2. In spite of service of notice on the 1st respondent, he has not appeared to contest the proceedings. Heard the learned counsel for the appellant. Since the diary extract of the Court is available as Annexure A, the records of the lower court were not called for.

3. Annexure A reveals that, on 16.03.2007 the complainant was present, his statement was recorded and the case was taken on file. Summons was issued to the accused but he did not appear. After two posting dates, the case stood posted to 18.01.2008, on which day the complainant was

absent and there was no representation resulting in the acquittal of the accused by the impugned order.

4. It is pertinent to note that the sworn statement was taken only on 16.03.2007 and the matter stood posted for the appearance of the accused. Having regard to the fact that the presence of the complainant was not essential on the relevant day, the Court should have adjourned the case to another day, granting some more time to the complainant. In the light of the above, the impugned order is not legally sustainable and 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. Both sides shall appear before the Court below on 14.01.2016. In the event of the accused remaining absent, the Court shall issue fresh summons to him to ensure his presence.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge