

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

CRL.A.No. 940 of 2011 ()

ST 1060/2006 of JUDICIAL FIRST CLASS MAGISTRATE COURT-III, KOCHI
DATED 05.02.2011

APPELLANT/COMPLAINANT:

KERALA STATE CIVIL SUPPLIES CORPORATION
LTD., MAVELI BHAVAN, GANDHI NAGAR
ERNAKULAM, REPRESENTED BY ADDITIONAL GENERAL MANAGER
COMMERCE, KERALA STATE CIVIL SUPPLIES CORPORATION
LTD., MAVELI BHAVAN, GANDHI NAGAR
ERNAKUL

BY ADVS.SRI N.D.PREMACHANDRAN,SC,KERALA STATE CIVIL SUPPLIES
CORPORATION

RESPONDENTS/ACCUSED & STATE:

1. M/S.POONOLIL RICE AND FOOD PVT. LTD.
ERUMATHALA, ALUVA, ERNAKULAM DISTRICT-683105.

2. P.P.JHONSON, MANAGING DIRECTOR,
M/S.POONOLIL RICE AND FOOD PVT.LTD., ERUMATHALA, ALUVA
ERNAKULAM DISTRICT-683105.
RESIDING AT POONOLIL HOUSE, THANNIPUZHA, OKKAL P.O.
KALADY-683550.

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

BY ADV. SRI.SHAJI CHIRAYATH
BY ADV. SMT.JIJI M. VARKEY
PUBLIC PROSECUTOR SRI.GITESH. R.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13-02-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

smv

K. ABRAHAM MATHEW,J.

Crl.Appeal No. 940 of 2011

Dated this the 13th day of February, 2015

JUDGMENT

The appellant filed a complaint under Section 138 of the Negotiable Instrument Act against the first respondent. On 05.02.2011, the trial court acquitted the first respondent under Section 256(1) Cr.P.C. for the reason that neither the complainant nor the accused was present and there was no representation for both of them. The acquittal is challenged.

2. Heard both sides.

3. Between 20.10.2006 and 05.02.2011 there was 30 postings for the case. On many of the posting dates the complainant's witness was present. On 31.07.2010 the complainant was represented in the trial court. The court adjourned the case to 10.08.2010 for evidence. Thereafter, there was four postings for the same purpose. It is not known why the case was adjourned on those posting dates. No reason is seen recorded by the learned Magistrate. The presence or absence of the parties also is not recorded. It appears that the case was being adjourned without it being taken up in the open court.

4. Having regard to all these facts, I am of the view that the

absence of witness for the complainant on 05.02.2011 is not deliberate. The complainant should be given an opportunity to adduce evidence. The order of acquittal is liable to be set aside.

In the result, the impugned order is set aside. The learned Magistrate is directed to take back the case to his file and give an opportunity to the complainant to adduce evidence. The parties are directed to appear in the trial court on 23.03.2015. Send back the records forthwith. The learned Magistrate may decide the question of jurisdiction before the evidence is recorded.

Sd/-

K. ABRAHAM MATHEW, JUDGE

//true copy//

P.A. To Judge

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