

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT:
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS
FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

CRL.A.No. 980 of 2011 ()

(CC 240/2008 of C.J.M., ALAPPUZHA)

APPELLANT(S)/COMPLAINANT:

GURUDAYAL.M.P,S/O.PALANIAPPAN,
PROPRIETOR, M/S.GURU JEWELLERS, MULLAKKAL
ALAPPUZHA.

BY ADV. SRI.R.AZAD BABU

RESPONDENT(S)/ACCUSED:

1. MOHANAN, HANUMARUVELIYIL, KALAVOOR,
KATTOOR.P.O, ALAPPUZHA.
2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.R.GITHESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09-01-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

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Crl.Appeal No. 980 of 2011

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Dated this the 9th day of January, 2015

J U D G M E N T

This is an appeal instituted under Sec. 378(4) of the Code of Criminal Procedure to impugn the order dated 26.9.2008 of the Chief Judicial Magistrate's Court, Alappuzha, rendered in the Calendar Case, C.C.No.240/2008, whereby the complaint has been dismissed due to the absence of the complainant on that day leading to the acquittal of the accused under Sec.256(1) of the Cr.P.C. The said Calendar Case arose out of a private criminal complaint filed by the appellant herein (complainant) alleging that the 1st respondent herein (accused) has committed the offence punishable under Sec.138 of the Negotiable Instruments Act for the alleged dishonour of the cheque in question. The impugned order dated 26.9.2008 of the court below in C.C.No.240/2008 reads as follows:

“Complainant absent. Accused absent. Accused did not appear. Complainant also absent. His counsel absent. No representation. Counsel for the complainant Sri.T.G.Sanalkumar. But he is also absent. Complainant did not take any effective steps to procure the presence of the accused till date. Without the presence of

the complainant or his counsel, I can not proceed with the complaint. Hence accused is acquitted u/s.256(1) Cr.P.C. Set at liberty.”

2. The appeal was admitted on 24.6.2011 and the Public Prosecutor had taken notice for the 2nd respondent–State of Kerala and notice was issued to the 1st respondent herein. Though service of notice on the 1st respondent has been completed, he has not entered appearance in this appeal.

3. Heard Sri.R.Azad Babu, learned counsel appearing for the appellant and the learned Public Prosecutor appearing for the 2nd respondent–State of Kerala.

4. It is averred in para 4 of the appeal memorandum that the complaint was filed on 22.4.2008 and the case was thereafter posted on various dates and on 26.9.2008, when the case was posted, the complainant could not be present for compelling reasons and therefore an application for adjournment was filed on his behalf. The accused was not present before the court below, although coercive steps were taken against him. In spite of this, the learned Chief Judicial Magistrate had rejected the application for adjournment and passed the order acquitting the accused under Sec. 256(1) of the Cr.P.C. It is clear from a mere reading of the

impugned order that not only the complainant was absent, but also the accused was also absent on the day in question and that the accused has not entered appearance. Moreover, the aforementioned factual averments in para 4 of the appeal memorandum that the complainant could not be present on that day due to compelling reasons and that an application for excusing his absence and adjournment was filed on his behalf and that the same was dismissed, etc. have not been rebutted by the 1st respondent herein. On an over all consideration of the facts and circumstances of this case, this Court is of the considered opinion that the court below ought to have facilitated in taking of a decision on the merits of the case instead of shutting out the case of the complainant at the threshold itself. This is all the more so because the accused was absent on that day and he has not entered appearance. The court below ought to have taken necessary steps in accordance with law to secure the presence of the accused in the above said criminal proceedings. In this view of the matter, the impugned order is set aside and the Calendar Case C.C.No. 240/2008 shall stand restored to the file of the Chief Judicial Magistrate's Court, Alappuzha. The court below will decide the case on merits with due opportunity to

both sides and in accordance with law. Having regard to the fact that the Calendar Case arose as early as in the year 2008, the court below will endeavour to take all reasonable measures to ensure that the case is finally disposed of without much delay, at any rate, well before the end of September, 2015.

With these observations and directions, this Criminal Appeal stands allowed.

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Sd/-
ALEXANDER THOMAS, JUDGE

///True copy///

P.S. to Judge