

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

CRL.A.No. 1017 of 2011 ()

AGAINST THE ORDER IN CrI.L.P. 257/2011 of HIGH COURT OF KERALA DATED
31-03-2011

AGAINST THE ORDER IN ST 209/2006 of J.M.F.C. - II, ETTUMANOOR DATED
13-02-2008

APPELLANT(S)/COMPLAINANT:

K.K.SATHEESHAN, S/O. KUNJAN,
AGED 45 YEARS, M.G.UNIVERSITY QUARTERS NO.4/44,
ATHIRAMPUZHA P.O. (KOLLAMPARAMBIL
BRAHMAMANGALAM P.O.THALAYOLAPARAMBU VIA, KOTTAYAM.

BY ADV. SRI.T.R.MADHU

RESPONDENT(S)/ACCUSED & STATE:

1. T.N.SADANANDAN, VADAKKETHOPPUVELY,
PANAVALLY P.O., CHERTHALA, ALAPPUZHA.
2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH CORUT OF KERALA
ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI.REJI JOESPH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
12-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 1017 of 2011

Dated this the 12th day of October, 2015

J U D G M E N T

The complainant in a proceeding under Section 138 of the Negotiable Instruments act, is the appellant herein. He laid a complaint alleging that the accused delivered a cheque for ₹2,00,000/- towards the discharge of a legally enforceable debt, which got dishonoured on presentation. The complaint was filed in 2006 and was pending for sometime. It was taken up on 13.02.2008, on which day the case stood posted for evidence. On that day, the complainant and his counsel were absent, though the accused was present. The Court below holding that, in spite of the specific direction to get ready for evidence and that the complainant was absent, by the impugned order, dismissed the complaint and acquitted the accused invoking Section 256(1) of the Cr.P.C This is assailed in this appeal.

2. The 1st respondent has been served though no appearance is marked. Heard the learned counsel for the appellant and examined the records.

3. The reason stated for the absence of the counsel as

discernible from the appeal memorandum at paragraph 2 is that, the counsel for the complainant was laid up and admitted in Amrita Hospital, Edappally due to severe brain tumour. There is nothing to disbelieve this version. It is also stated that, the appellant had been contacting the lawyer consistently and the phone was not being taken up.

4. It is true that, the case was posted on that day, specifically for adducing the evidence. The learned Magistrate has also recorded that direction was given to the complainant to get ready for giving evidence. However, considering the fact that the counsel was laid up which is not seen controverted, and that the complaint is for a substantial amount of ₹2,00,000/- and the further fact that the matter has been pending before the Court atleast since 2006, which indicates that the complainant was diligently prosecuting till that time, I am inclined to take a lenient view and to set aside the impugned order. Though the accused remained absent before this Court and is bound by any order passed by this Court, in the interest of justice, I feel that fresh summons should be issued to the accused from the trial Court.

In the result, the appeal is allowed. The impugned order is

set aside and the matter is remanded back to the Court below for a fresh consideration. Both sides shall appear before the Court below on 01.12.2015. If the accused does not mark his appearance on that day, the Court below shall issue fresh summons to the accused and thereafter proceed in accordance with law.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn