

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

CRL.A.No. 1080 of 2011 ()

AGAINST THE ORDER IN CC 154/2010 of CHIEF JUDICIAL MAGISTRATE,
ALAPPUZHA DATED 30.03.2011

AGAINST THE ORDER IN Cr1.L.P. 381/2011 of HIGH COURT OF KERALA DATED
27.06.2011

APPELLANT/COMPLAINANT:

ABHAYAKUMAR, AGED 42 YEARS,
S/O.GOPALAKRISHNAPANICKER, ABHAYAM (NEDIYAMPOLAYIL)
GURUPURAM, SOUTH ARYAD, AVALOOKUNNU P.O.
ALAPPUZHA.

BY ADV. SRI.S.SANAL KUMAR

RESPONDENTS/ACCUSED & STATE:

1. K.K.MOHANAN, KALARICKAL PARAMBIL,
AMBEDKAR ROAD, EDAKOCHI P.O., COCHIN-682006.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. PUBLIC PROSECUTOR: SMT.M.G.LISHA
R1 BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
R1 BY ADV. SRI.S.SUJIN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.1080 of 2011

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Dated this the 03rd day of December, 2015

JUDGMENT

The complainant is the appellant herein. The appellant filed a private complaint invoking Section 138 of the Negotiable Instruments Act on the strength of a dishonoured cheque for a sum of Rs.50,000/-. Since the summons could not be served on the accused, non-bailable warrant was issued to the accused and the case stood posted to 30.03.2011. On that day, the complainant and his counsel were absent. The court below, by the impugned order, dismissed the complaint invoking Section 256(1) of Cr.P.C. and acquitted the accused. This is challenged in this appeal.

2. Heard both sides and examined the records.

3. It is an admitted fact that the complainant was absent on 30.03.2011. Even though, in the appeal memorandum, the appellant had taken up a contention that on the date of posting, the complainant was represented by the counsel but the Court proceeded to dismiss the application. I am not inclined to accept it since the impugned order itself indicates that there was no representation. However, the Court invoked Section 256(1) of Cr.P.C. The impugned order is prima facie not sustainable for the

simple reason that the impugned order itself show that on that day, the Court noted that non-bailable warrant was not executed. That being the position, presence of the complainant was not essential on that day. It naturally indicates that the absence of the complainant on that day was not intended to protract or delay the proceeding. Court below could have taken into consideration the fact that the complaint was filed in 2010 and till the date of dismissal, complainant had been prosecuting the matter, except for a solitary instance of absence of the complainant on that day. It is true that the absence of the counsel is not explained, still, having regard to the facts mentioned above, I feel that the impugned order is not legally sustainable and is liable to be set aside. In the circumstances, the matter is remanded to the court below to enable the complainant to prosecute the matter.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remanded to the court below for proceeding in accordance with law. Both sides shall appear before the court below on 16.01.2016.

Sd/-

SUNIL THOMAS
Judge

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True Copy /

P.A to Judge