

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

CRL.A.No. 1190 of 2011 ()

AGAINST THE ORDER IN Cr1.L.P. 231/2011 of HIGH COURT OF KERALA DATED
18-03-2011

AGAINST THE ORDER IN ST 241/2009 of JUDICIAL FIRST CLASS MAGISTRATE
CORUT-IV, KOLLAM DATED 29-12-2010

PETITIONER/COMPLAINANT:

ANIL, S/o. CLETUS
ANIL SADANAM, KUMBALAM P O
PERAYAM, MULAVANA, KOLLAM

BY ADVS.SRI.O.V.MANIPRASAD
SRI.SAJU J PANICKER
SRI.LIJO KURIAN JOSE

RESPONDENT/ACCUSED AND THE STATE:

1. JASPINKUTTY, W/o.VIJAYAN
KAVUNTHANAM, KUMBALAM P O
MULAVANA (VIA), KOLLAM-691001
2. THE STATE OF KERALA
REPRESENTED BY the PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM 682 031

BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 16-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.1190 of 2011

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Dated this the 16th day of November, 2015

JUDGMENT

The complainant had instituted a complaint under Section 138 of the Negotiable Instruments Act on the strength of a dishonoured cheque for a sum of Rs.15,000/-. After the appearance of the accused, the case was posted to 29.12.2010 for recording the evidence of the complainant as last chance. On that day, the complainant was absent, though represented by his counsel. The court below by the impugned order acquitted the accused invoking Section 256(1) of the Cr.P.C.

2. Learned counsel for the appellant invited my attention to paragraph 3 of the appeal memorandum, wherein the several posting dates prior to the date on which the accused was acquitted are extracted. It shows that on most of the previous posting dates, the complainant was present. Ultimately, he filed his chief affidavit on 14.10.2010 and thereafter, since he was not cross examined the evidence was closed and the case was posted for examination of the accused under Section 313 Cr.P.C. Thereafter, the accused filed an application under Section 311 Cr.P.C. The

application was allowed and the matter was posted for cross examination. Though the case was posted on 28.12.2010, advocate clerk wrongly noted the posting date as 28.01.2011. The complainant states that he was unaware of the posting date on 29.12.2010. Hence, complainant was not present in person but his counsel sought an adjournment.

3. The entire facts disclose that the complaint which was filed in the year 2006 was being prosecuted by the complainant through his counsel till the date of impugned order in 2011. Further, the complainant was examined in chief and on several posting dates, he was personally present. Whenever he was absent, he was effectively represented, including the date on which the accused was acquitted. These facts evidently showed that no negligence can be attributed to the complainant and his absence on the specific date is explained. Hence, he is entitled for one more reasonable opportunity to contest the proceeding. I am inclined to allow the appeal.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remanded to the court below to enable the complainant to prosecute his case. Both sides shall

appear before the court below on 29.12.2015. In the event of the accused (first respondent) remaining absent, Court shall issue fresh summons to procure his presence.

Sd/-

SUNIL THOMAS
Judge

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True Copy /

P.A to Judge