

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

CRL.A.No. 1207 of 2011 ()

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(JUDGMENT DTD.26.6.09 IN ST 1164/2008 of J.M.F.C.-II,PATHANAMTHITTA)**

APPELLANT(S)/COMPLAINANT::

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M/S.SREE GOKULAM CHITS AND FINANCE
COMPANY PVT.LTD., PATHANAMTHITTA, REPRESENTED BY
POWER OF ATTORNEY HOLDER, JAMES PHILIP, S/O.K.C.PHILIP
AGED 35, CHIRAMEL BUILDING, IIND
FLOOR, BETHEL JUCTION, CHENGANNUR
ALAPPUZHA DISTRICT.**

BY ADV. SRI.C.S.MANILAL

RESPONDENT(S)/ACCUSED AND STATE::

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- 1. CHELLAMMA, PANIKKASSERIL HOUSE,
VALIYAKULANGARA P.O., KULANJIKARAZHMA, MAVELIKKARA.**
 - 2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.**

R2 BY ADV. PUBLIC PROSECUTOR SRI.M.K.ABOOBAKER

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07-01-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ALEXANDER THOMAS, J.

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Crl.Appeal No. 1207 of 2011

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Dated this the 7th day of January, 2014

J U D G M E N T

This is an appeal filed under Sec.378 (4) of the Code of Criminal Procedure to impugn the judgment dated 26.6.2009 of the Court of Judicial First Class Magistrate-II, Pathanamthitta, in S.T.No.1164/2008, whereby the complaint has been dismissed due to the absence of the complainant on that day and consequently, the accused has been acquitted under Sec.256(1) of the Code of Criminal Procedure. The above said summary trial case arose out of a private criminal complaint instituted by the appellant herein alleging that the 1st respondent herein (accused) has committed the offence under Sec.138 of the Negotiable Instruments Act for the dishonour of the cheque in question for an amount of Rs. 30,195/-. The impugned judgment dated 26.6.2009 of the court below reads as follows:

“This is a case instituted on a complainant (sic) alleging offence u/s.138 of N.I. Act.

The complainant's case is briefly stated below:

Towards a liability of Rs.30,195/- the accused issued a cheque bearing No.323021 dtd.14.10.08. The cheque was dishonoured due to insufficiency of funds. The statutory notice of demand was issued on 1.2.08. Accused accepted the notice on 11.2.08 but he refused to make payment. Hence the complaint.

The complainant is absent. There is no representation. Hence the complaint is dismissed and the accused is acquitted u/s.256(1) Cr.P.C..”

2. This appeal was admitted on 21.7.2011 and notice was issued to R-1 by speed post and Public Prosecutor had taken notice for R-2 State of Kerala. Service of notice on R-1 has also been duly completed, but there is no appearance on behalf of R-1.

3. Heard Sri.C.S.Manilal, learned counsel for the appellant and the learned Public Prosecutor appearing for the respondent-State of Kerala.

4. The appellant would submit that, as averred in Ground B of the appeal memorandum, the non-appearance of the complainant on 26.6.2009 was due to the inadvertent mistake committed by the advocate clerk attached to the counsel appearing for the complainant before the court below in noting the posting date of the case and that it is only because of this bona fide mistake that the complainant was unaware about the posting date and he could not appear on that day. It is further averred in Ground C of the appeal memorandum that the case was posted for appearance

of the accused on 26.6.2009. The appellant has produced copy of the case diary proceedings in S.T.No.1164/2008 as Annexure-A and it is seen that on 17.3.2009, the complainant was absent, but represented through counsel and summons was ordered to be issued to the accused for appearance on 26.6.2009. Accordingly, it is contended by the appellant that there was no need or necessity for the complainant to be present on 26.6.2009 and therefore, the dismissal of the complaint due to the absence of the complainant on 26.6.2009 is illegal and arbitrary.

5. Considering the above said submissions of the complainant, this Court is of the considered opinion that the court below should have facilitated the rendering of the decision on the merits of the case with reasonable opportunity to both sides so that the case of the complainant is not shut out at the threshold itself. The 1st respondent has not chosen to rebut the above said explanation put forward by the complainant that his non-appearance on 26.6.2009 was due to the aforementioned circumstances. Moreover, it is clear from Annexure-A that on 17.3.2009, the complainant was represented through counsel and the learned Magistrate had issued summons for appearance of the

accused on 26.6.2009. Therefore, the dismissal of the complaint due to the non-appearance of the complainant on 26.6.2009 is not proper or reasonable. In the light of these facts and circumstances, the impugned judgment dated 26.6.2009 of the court below in S.T.No.1164/2008 is set aside. The Summary Trial case, S.T.No.1164/2008 is restored to the file of the court below. The court below shall decide the case on merits after reasonable opportunity to both sides and in accordance with law. Having regard to the fact that the Summary Trial case arose as early as in the year 2008, the court below shall endeavour to take all reasonable measures to ensure that the case is disposed of without much delay, at any rate, well before the end of August, 2015.

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

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge