

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

CRL.A.No. 1213 of 2011 ()

AGAINST THE ORDER/JUDGMENT IN Cr.L.P. 572/2011 of HIGH COURT OF KERALA
DATED 13-07-2011

AGAINST THE ORDERN CC 875/2008 of JUDICIAL FIRST CLASS MAGISTRATE COURT -II,
THRISSUR DATED 07-07-2009

PETITIONER/APPELLANT/COMPLAINANT:

MERCY.P.V, M/S.AISWARYA TRADERS,
VELLARA HOUSE, P.O. NGAMANEGAD, THRISSUR
REPRESENTED BY POWER OF ATTORNEY, SUNNY, S/O. ANTONY
VELLARA HOUSE, P.O. NGAMANEGAD, VYLATHUR, CHAVAKKAD, THRISSUR.

BY ADV. SRI. RAJIT

RESPONDENTS/RESPONDENT/ACCUSED AND STATE:

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1. C.K. KANNAN, VIJAYA CONSTRUCTIONS,
VIJAYA BHAVAN, XXXVI/III, KOTTEKKAD LANE
POONKUNNAM, THRISSUR-2.
 2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

R BY PUBLIC PROSECUTOR SRI. ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AV

SUNIL THOMAS, J.

Crl. Appeal No. 1213 of 2011

Dated this the 5th day of October, 2015

J U D G M E N T

The appellant is the complainant in C.C. No.875/2008 of the Judicial First Class Magistrate II, Thrissur. The complainant had laid the complaint alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act on the strength of a cheque for a sum of ₹2,66,240/- alleged to have been issued by the accused towards the discharge of a legally enforceable debt. Summons was issued to the accused who appeared and contested the proceedings. The matter was thereafter posted to 07.07.2009 for evidence as last chance. On that day, the accused was present, but the complainant was absent. Consequently, the Court below acquitted the accused invoking Section 256(1) Cr.P.C. This is under challenge in this appeal.

2. Though notice was served on the 1st respondent, he did not appear and contest the proceedings. Heard the learned counsel for the appellant and the learned Public Prosecutor.

3. It is an admitted fact that, the case stood posted to

07.07.2009 for adducing evidence as last chance. It is further admitted that, on that day, the complainant was absent and there was no representation also. The appellant has attributed this to a wrong noting of the date of posting as 07.11.2009 instead of 07.07.2009. However, there is no evidence, not even a copy of the posting book kept in the office of the counsel to show that there was a wrong posting of the case. Considering the fact that the cheque amount is for a sum of ₹2,66,240/- and there is nothing on record to show that, on the prior occasion also there was laches on the part of the appellant, I am inclined to take a lenient view. It is also for the reason that, it cannot reasonably be expected that a litigant who approaches the Court and has been contesting the proceedings would remain lethargic and invite an adverse order, including the dismissal of his complaint. Considering these facts, I feel that, it would be proper, if the matter is remanded to the Court below for a fresh consideration on merits. Though the respondent who was served remained absent before this Court, at his risk and is bound to comply with any direction issued by this Court, I feel that a remand without notice to him may work out injustice to the accused. Hence, the

Court below shall issue fresh summons to the accused for his appearance and after due service proceed with the trial of the Court.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remanded to the Court below for enabling the complainant to appear and lead evidence. The appellant shall appear on 02.11.2015. Thereafter, the Court below shall issue fresh summons to the accused and after his service, proceed with the trial of the case after giving a reasonable opportunity to both sides to tender evidence.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn