

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

CRL.A.No. 1214 of 2011 ()

AGAINST THE ORDER IN CrI.L.P. 517/2011 of HIGH COURT OF KERALA DATED
04-07-2011

AGAINST THE ORDER IN ST 788/2006 of J.M.F.C.-1, KOTTAYAM DATED
19-11-2007

PETITIONER/COMPLAINANT:

MILLY KORAH, POOZHICKATTU VAVILLIYIL,
THRIKKOTHAMANGALAM, KOTTAYAM.

BY ADV. SRI.V.K.SUNIL

RESPONDENT(S)/ACCUSED & NON-PARTY STATE::

1. SALI.K.V, S/O.VELU, KUNNEPARAMBIL HOUSE,
PUTHUPPALLY, KOTTAYAM.

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

R2 BY PUBLIC PROSECUTOR SMT.LISHA M.G.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
13-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 1214 of 2011

Dated this the 13th day of October, 2015

J U D G M E N T

This appeal is against the order of the Court below dated 19.11.2007, by which the complaint was dismissed and the accused was acquitted invoking Section 256(1) of the Cr.P.C.

2. The impugned order itself indicates that, the case was posted to that day for cross examination of the complainant. However, in spite of the last opportunity granted, the complainant remained absent on that day and the case was called and in the absence of the complainant, the accused was acquitted. In the appeal memorandum the reason stated is that, the complainant was laid up and an adjournment was sought on his behalf by the counsel.

3. In spite of notice served on the accused he has not appeared and contested the proceedings. Heard the learned counsel for the accused and examined the records.

4. Even though the records were called for, I feel that, since the absence of the complainant on that day is patent from the records, the matter can be decided on the basis of the available materials. The only explanation given by the appellant

is that, he was laid up and the matter was informed duly to the counsel. The impugned order does not disclose that, the counsel for the complainant was absent and no request was made. The very fact that, the matter has been pending since 2006, that a huge amount is involved and that it appears that the affidavit in Chief Examination was filed indicates that the complainant was diligent in prosecuting the matter. Considering the entire facts, I feel that one more opportunity can be granted to the appellant to contest the matter on merits.

Hence, the appeal is allowed. The impugned order is set aside and the matter is remanded back to the Court below for a fresh consideration after enabling the complainant to offer himself for cross examination. In case, the accused remains absent, the learned Magistrate can order fresh summons to the accused for procuring his presence. Both sides shall appear before the Court below on 02.12.2015.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn