

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

CRL.A.No. 1247 of 2011 (A)

AGAINST THE ORDER IN CrI.L.P. 549/2011 of HIGH COURT OF KERALA DATED
06-07-2011

AGAINST THE JUDGMENT IN CC 670/2007 of J.M.F.C.-I, ATTINGAL DATED
05-05-2011

APPELLANT(S)/COMPLAINANT:

USHAKUMARI,
T.S.BHAVANAM, VANCHIYOOR P.O.,
ALAMCODE VILLAGE

BY ADV. SRI.M.DINESH

RESPONDENT(S)/ACCUSED & STATE:

1. C.INDIRA,
VILAYIL VEEDU, AMBALATHINKARA,
KAZHAKUTTOM 695 001.

2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM 682 031.

R2 BY PUBLIC PROSECUTOR SRI.ABHIJITH LESLIE
R1 BY ADV. SRI.K.P.SUJESH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
12-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 1247 of 2011

Dated this the 12th day of November, 2015

J U D G M E N T

The complainant filed a complaint against the 1st respondent herein invoking Section 138 of the Negotiable Instruments Act, on the basis of a dishonoured cheque for a sum of ₹2,00,000/-. Thereafter, there appears to have been several postings and the case stood posted to 05.05.2011. On that day, the complainant nor his counsel were present and hence the accused was acquitted under Section 256 Cr.P.C. This is under challenge in this appeal.

2. Heard both sides and examined the records.

3. The learned counsel for the 1st respondent contended that, no sufficient ground has been made out to challenge the impugned order.

4. The learned counsel for the petitioner contended that, the case stood originally posted to 04.05.2011 and with a direction to take steps, it was adjourned to 05.05.2011. According to the learned counsel, that date was wrongly taken down as 15.05.2011. Hence neither the counsel nor the complainant were present on 05.05.2011.

5. It is pertinent to note that the cheque amount is for a sum of ₹2,00,000/-. The complaint seems to have been filed sometime in 2007. After having prosecuted the matter from 2007 till 05.05.2011, it cannot be reasonably expected that the complainant would voluntarily remain negligent and invite a dismissal of his own complaint. Further, there is nothing on record to show that the presence of the complainant was essential on that day.

6. Considering these facts and having regard to the amount involved in the cheque, the Court could have reasonably granted one more opportunity to the complainant to prosecute his matter. Hence the impugned order though otherwise legally unassailable, is liable to be set aside to enable the complainant to give one more opportunity 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 to enable the complainant to prosecute his case. Both sides shall appear before the court below on 19.12.2015.

Sd/-
SUNIL THOMAS, JUDGE.
 /true copy/

P. A. to Judge

Pn