

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

CRL.A.No. 1295 of 2011 ()

AGAINST THE ORDER IN CrI.L.P. 481/2011 of HIGH COURT OF KERALA DATED 21.06.2011

AGAINST THE ORDER IN CC 47/2009 of J.M.F.C.-II (FOREST OFFENCES),
MANJERI DATED 28.02.2011

APPELLANT(S) :

NARENDRA KUMAR CHHAJER, AGED 43 YEARS
MANAGING DIRECTOR, M/S ANUPAM FINLEASE (INDIA)
LIMITED, NO.36, WALLTAX ROAD,
S.P.COMPLEX, SOWCARPET, CHENNAI 600 079
REP. BY POWER OF ATTORNEY HOLDER,
P.M.ABDULRAHIMAN, AGED 43 YEARS
S/O.MOIDEEN, PALAMOOTIL HOUSE, ARIpra P.O.,
(VIA) ANGADIPPURAM, PERINTHALMANNA TALUK,
MALAPPURAM DISTRICT,
(WITHIN THE LIMITS OF PERINTHALMANNA POLICE STATION)

BY ADV. SRI.K.M.JAMALUDHEEN

RESPONDENT(S) :

1. SALI, AGED 38 YEARS, S/O VELU, 4/139,
KUNEPARAMBU HOUSE, NEAR CSI CHURCH, P.O.PUTHUPALLY
KOTTAYAM DISTRICT (WITHIN THE LIMITS OF PUTHUPALLY
POLICE STATION)

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

R2 BY PUBLIC PROSECUTOR SRI.ABHIJITH LESLIE.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
14-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 1295 of 2011

Dated this the 14th day of October, 2015

J U D G M E N T

The appellant is the complainant in C.C. No.47/2009 of the Judicial First Class Magistrate II, Manjeri, in a complaint under Section 138 of the Negotiable Instruments Act.

2. The case was posted to 28.02.2011 for evidence. On that day, the complainant was absent and there was no representation on his side. The accused was present. Hence the Court below by the impugned order dismissed the complaint holding that the complainant had not adduced evidence in spite of several opportunities granted. This is under challenge in this appeal.

3. In spite of notice served on the 1st respondent, he did not appear to contest the proceedings. Heard the learned counsel for the appellant.

4. The cheque was one for ₹63,223/-. The complainant in paragraph 3 of the appeal memorandum had given the details of the various postings of the case, which itself indicate that the matter was being posted on several dates and was being

diligently prosecuted by the complainant. In the meanwhile the chief affidavit of the complainant was also filed and ultimately the matter was posted to 28.02.2011.

5. It appears that the Court has also given reasonable opportunity to the appellant to adduce evidence. The reason for the absence of the complainant on that day is that, he was laid up with fever and it is submitted that it was represented before the learned Magistrate. However, the illness of the complainant is not proved by any documentary evidence nor is there anything on record to show that there was an effective representation on the side of the appellant. However, it is on record that, the appellant has been diligently prosecuting the matter since 2009 till 2011. The very fact that the complaint has been pending since 2009 till February 2011, on which day the complaint was dismissed, itself indicates that the complainant has been diligently prosecuting the matter, at least during that period.

6. Having regard to this fact, I feel that one more opportunity can be granted to the appellant to contest the matter on merits. Hence the impugned order is liable to be set aside. However, since the 1st respondent remained absent before this

Court, the Court below shall issue fresh summons to the accused if he does not appear on the proposed date of appearance to be mentioned hereinafter.

In the result, 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 giving one more opportunity to the complainant to prosecute the matter. Both sides shall appear before the Court below on 04.12.2015. In the event of the accused remaining absent on that day, the Court below shall issue fresh summons to the accused to procure his presence and thereafter regulate its proceedings, in accordance with law.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn