

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

CRL.A.No. 1324 of 2011 (A)

AGAINST THE ORDER IN CrI.L.P. 539/2011 of HIGH COURT OF KERALA DATED 15-07-2011

AGAINST THE ORDER IN CC 213/2009 of J.M.F.C.-III, KOTTARAKKARA DATED 25-11-2010

APPELLANT(S)/PETITIONER/COMPLAINANT:

SAJAN, S/O.YOOSAF RAVOOTHAR,
KANNANKKARA HOUSE, MAKOTTU VILLAGE, KOTTARAKKARA
TALUK, REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
YOOSAF RAVOOTHAR, KALLUVETTAMKUZHI, KANNANKKARA HOUSE
MAKOTTU VILLAGE, KOTTARAKKARA TALUK.

BY ADV. SRI.SAJU.S.A

RESPONDENT(S)/STATE AND ACCUSED:

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

2. PRADEEP, RURAL COMMUNITY DEVELOPMENT
SOCIETY, EXECUTIVE SECRETARY, ADMINISTRATIVE
OFFICE, PARANTHOOR TEMPLE ROAD, ELAMAKKARA
KOCHI - 682 026.

R1 BY PUBLIC PROSECUTOR SMT.MADHUBEN

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

SUNIL THOMAS, J.

Crl. Appeal No. 1324 of 2011

Dated this the 11th day of November, 2015

J U D G M E N T

The complainant laid a complaint under Section 138 of the Negotiable Instruments Act on the strength of a cheque for a sum of ₹1,41,256/-. Pursuant to the summons issued from the Court, the accused appeared and after several postings it was adjourned to 25.11.2010 recording as last chance for adducing evidence. On that day, the complainant was absent. Holding that the complainant is continuously absent, the Court below acquitted the accused invoking Section 256(1) of the Cr.P.C. This is under challenge in this appeal.

2. Notice was served on the 2nd respondent, who did not appear and contest the proceedings. Heard the learned counsel for the appellant and examined the records.

3. It is an admitted fact that, the complainant was absent on 25.11.2010 on which day, the case stood posted as last chance for recording evidence. Apparently, no application was filed to condone his absence also. The Court below in the above circumstances was legally justified in passing an order which it felt appropriate in the facts and circumstances of the case.

However, it is pertinent to note that the cheque amount is substantial. The complaint was filed in the year 2008 and evidently till November, 2010, the matter was being pursued by the complainant as evident from the available records. Impugned order also indicates that there was representation, though it is not specifically disclosed in the order. It can be so assumed since there is nothing on record to show that there was no representation for the complainant.

4. Having regard to the above facts, it would have been more proper, if the Court had granted one more opportunity to the complainant to contest his proceedings and to pursue the matter. Hence I am inclined to set aside the order and to give one more opportunity to the complainant to prosecute his matter.

5. In the result, the appeal is allowed and the impugned order is set aside. The matter is remanded to the Court below for enabling the complainant to appear on that day and to be ready with evidence. Both sides shall appear before the Court below on 21.12.2015. In the event of the accused remaining absent, the Court below shall issue summons to him to procure his presence.

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

P. A. to Judge