

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT:
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

CRL.A.No. 1444 of 2011 ()

(AGAINST JUDGMENT IN CC 171/2008 of J.M.F.C.-I,KOZHIKODE DATED 23-04-2010)

APPELLANT(S)/COMPLAINANT:

**K.KRISHNAN,S/O.KUTTAN,
AGED 69 YEARS, KANAKANAM KANDY HOUSE, PANNIYANKARA
KOZHIKODE**

**BY ADVS.SRI.C.P.MOHAMMED NIAS
SMT.M.LISHA**

RESPONDENT(S)/ACCUSED AND THE STATE:

- 1. K.SUBHASH,S/O.VELAYUDHAN,
THEKKUVEETIL HOUSE, P.O.KINALOOR, VATTOLI BAZAR
BALUSSERI, KOZHIKODE 673621**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM**

**R1 BY ADV. SRI.T.G.RAJENDRAN
R2 BY PUBLIC PROSECUTOR SRI.M.K.ABOOBACKER**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07-01-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ALEXANDER THOMAS, J.

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Crl.Appeal No. 1444 of 2011

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Dated this the 7th day of January, 2015

J U D G M E N T

This is a appeal filed under Sec.378(4) of the Code of Criminal Procedure to impugn the order dated 23.4.2010 of the Court of Judicial First Class Magistrate-I, Kozhikode, in Calendar Case, C.C.No.171/2008, whereby the complaint was dismissed. The Calendar case arose out of the private criminal complaint filed by the appellant herein alleging that the 1st respondent (accused) has committed the offence punishable under Sec.138 of the Negotiable Instruments Act for the alleged dishonour of the cheque in question. The impugned order dated 23.4.2010 in C.C.No.171/2008 reads as follows:

“This is a private complaint filed against the accused u/s.138 of the Negotiable Instruments Act.

Complainant present. But he is not ready to adduce evidence. Several chances already given for evidence. Accused absent. Applied. Complaint dismissed and accused is acquitted u/s.256(1) Cr.P.C.”

2. Heard Sri.C.P.Mohammed Nias, learned counsel appearing for the appellant, Sri.T.G.Rajendran, learned counsel appearing for the 1st respondent and the learned Public Prosecutor appearing for the 2nd respondent– State of Kerala.

3. It is averred in Ground B of the appeal memorandum that the court below ought to have considered the fact that the complainant was ready to adduce evidence and the counsel, who represented the matter, requested only to keep aside the said matter, since the complainant's counsel was preparing the chief affidavit in lieu of examination and that therefore, the court below erred in dismissing the complaint on the ground that the complainant was not ready to adduce evidence. The learned counsel appearing for the appellant would further submit that it is indisputable that the appellant/ complainant had appeared before the court on the day in question, viz., 23.4.2010 as can be seen from a mere reading of the impugned order itself. Therefore, the complaint could not have been dismissed under Sec.256(1) of Cr.P.C. as the provisions of Sec.256(1) Cr.P.C. empower the Magistrate to dismiss the complaint and acquit the accused by virtue of that provision only if the complainant is absent. Moreover, it can be seen that even the accused was absent on that day. There are no circumstances to disbelieve the version of the appellant that his counsel was ready to adduce evidence on that day and that the counsel had only requested the court below to keep aside the

matter since complainant's counsel was preparing the chief affidavit in lieu of examination.

4. In these circumstances, the court below ought to have ensured that the matter is adjourned so as to facilitate rendering of a decision on merits of the case after due opportunity to both sides. In this view of the matter, the impugned order is set aside. The Calendar Case, C.C.No.171/2008 shall stand restored to the file of the court below. The court below will decide the case on merits after reasonable opportunity to both sides and in accordance with law. The appellant herein (complainant) and the 1st respondent herein (accused) shall appear before the court below on 31.1.2015. Having regard to the fact that the Calendar Case arose as early as in the year 2008, the court below shall endeavour to ensure that all reasonable measures are taken to finally dispose of the case well before the end of August, 2015.

With these observations and directions, this Criminal Appeal stands allowed.

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge

