

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

CRL.A.No. 1469 of 2011 ()

AGAINST THE ORDER IN Cr1.L.P. 319/2011 of HIGH COURT OF KERALA DATED
23-05-2011

AGAINST THE ORDER IN ST 546/2005 of JUDICIAL FIRST CLASS
MAGISTRATE-I, THRISSUR DATED 23-10-2006

APPELLANT/REVISION PETITIONER/COMPLAINANT:

THANU JENY, PROPRIETOR OF PETROMOTEL,
REPRESENTED BY POWER OF ATTORNEY HOLDER
LAWRENCE SEBASTIAN, THARAPPEL HOUSE, ULLANAD
PALA, KOTTAYAM.

BY ADV. SRI.C.A.ANOOP

RESPONDENT/RESPONDENT/ACCUSED & STATE:

1. V.K.SIJU, S/O.KRISHNAN MASTER,
VADAKKUMTHALATH HOUSE, NENTHIKARA P.O.
THRISSUR. PIN - 680301.

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

R2 BY ADV. PUBLIC PROSECUTOR: SRI ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 16-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.1469 of 2011

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Dated this the 16th day of November, 2015

JUDGMENT

The appellant is the complainant in S.T.No.546 of 2005 in a proceeding under Section 138 of the Negotiable Instruments Act on the strength of a dishonoured cheque for Rs.13,185/-. The case, after several postings was posted to 23rd September 2006 for recording the evidence of the complainant. On that day, the complainant was absent and the Court holding that there was no bonafides in his absence, acquitted the accused invoking Section 256(1) of the Cr.P.C. This is challenged in this appeal.

2. In spite of service of notice on the first respondent, he has not appeared to contest the proceedings. Heard and examined the records.

3. It is evident that the appellant was absent on the date on which the impugned order was passed. The impugned order further indicates that the matter had been posted on several occasions and ultimately posted as last chance. On the previous

posting dates also, the appellant was personally not present. In the above circumstance, court below was perfectly within its jurisdiction to pass an order which it deemed fit and proper in the facts and circumstances of the case.

4. However, it is to be noted that though the cheque amount is not substantial, the complaint was instituted sometime in 2005. He has been prosecuting it till 23rd September 2006. Even on that day, though the complainant was not personally present, he was effectively represented by the counsel and in fact, an application to condone the absence was also filed. In the above circumstance, it cannot be stated that the complainant was grossly negligent in prosecuting the matter. The court below should have taken into consideration these facts while taking a decision.

5. In the above circumstance, I feel that the impugned order is not legally sustainable and is liable to be set aside.

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 the matter as a last chance. Both sides shall appear before the court below on 29.12.2015. In event of the accused remaining absent, Court shall issue fresh

summons to him to ensure his presence.

Sd/-

SUNIL THOMAS
Judge

Sbna

True Copy /

P.A to Judge