

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 29TH DAY OF JUNE 2015 / 8TH ASHADHA, 1937

CRL.A.No. 1489 of 2011

AGAINST THE ORDER/JUDGMENT IN ST 200/2007 of J.M.F.C.-IV,
KOCHI DATED 25-02-2011

AGAINST THE ORDER/JUDGMENT IN CrI.L.P. 651/2011 of
HIGH COURT OF KERALA DATED 26-07-2011

APPELLANT/COMPLAINANT:

M/S EICHER MOTORS LTD., 102, INDUSTRIAL AREA NO.1
PITHAMPUR DIST. DHAR: MADHYA PRADESH THROUGH
ITS BRANCH OFFICE AT 40/1170A, 1ST FLOOR,
MANGALATH BUILDING, T.D.ROAD, COCHIN-682 011,
REPRESENTED BY POWER OF ATTORNEY HOLDER SATISH.D,
AGED 38 YEARS, S/O.A.P.DIVAKARAN.

BY ADV.SRI.C.KHALID

RESPONDENTS/ACCUSED & STATE:

1. MR.P.V.SANTHOSH, AGE NOT KNOWN,
S/O.KARUNAKARAN, VALIYANDI HOUSE,
NIRMALAGIRI P.O., KUTHUPARAMBA,
THALASSERY TALUK, KANNUR-676 101.
2. STATE, REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, COCHIN-31.

R2 BY PUBLIC PROSECUTOR
R,R1 BY ADV. SRI.T.REMESH BABU
R,R1 BY ADV. SRI.C.K.SREEJITH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 29-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.T.RAVIKUMAR, J.

Crl.A.No.1489 of 2011

Dated 29th June, 2015

JUDGMENT

This appeal is directed against the order dated 25.2.2011 in S.T.No.200 of 2007 passed by the Court of Judicial First Class Magistrate-IV, Kochi. The appellant was the complainant and the first respondent herein was the accused in S.T.No.200 of 2007. A perusal of the impugned judgment would reveal that the case was posted for evidence of the complainant and the complainant was absent. He was represented and the counsel sought for an adjournment. The court below arrived at the finding that there was no bona fides for the prayer for adjournment as despite the granting of several adjournments for the purpose of adducing evidence the complainant/appellant herein failed to adduce evidence and even he did not file proof affidavit. In the said circumstances, taking note of the fact that the case was posted for evidence and without the presence of the complainant the matter could not have been proceeded further, the learned Magistrate invoking the power under Section 256, Cr.P.C. dismissed the complaint and consequently acquitted the accused.

2. I have heard the learned counsel for the appellant.

3. The learned counsel for the appellant contended that the reason assigned by the trial court in dismissing the complaint under Section 256 Cr.P.C. that the complainant had not even filed a proof affidavit is not true to facts. Though such a contention was taken no proof whatsoever has been produced before this Court to show that proof affidavit has been filed before the court below. I am of the view that, in this case, the question to be considered is whether the specific statement in the impugned judgment that the case was posted for evidence of the complainant and the adjournment was sought for only for the purpose of harassing the accused is having any basis. A certified copy of the proceedings of the Court was made available to me for perusal by the appellant. It would reveal the proceedings on various dates as hereunder:-

"15.03.07 - Complainant absent not represented. Issue summons to accused and produce cover, for appearance of parties. Return of summons 25.6.07.

25.06.07 - Magistrate on leave. Adjourned to 31.7.07.

31.07.07 - Complainant present. Take steps today Issue summons. For return of summons 3.11.07.

3.11.07 - Complainant present. Repeat summons. For return of summons 16.1.08.

- 16.01.08 - Complainant present. No steps seen taken. Call on 10.04.08.
- 10.04.08 - Complainant absent represented. Issue summons. For return of summons 16.08.08.
- 16.08.08 - Complainant absent represented. Produce stamp and cover. Repeat summons. For return of summons 7.1.09.
- 08.01.09 - Complainant absent represented. Produce stamp and cover with 2 days. Repeat summons. Call on 5.5.09.
- 05.05.09 - Complainant absent represented. Repeat summons. For return of summons 18.09.09.
- 18.09.09 - Complainant absent. No representation. Accused applied through lawyer. Warrant canceled. Petition u/s 205 allow. Permanent exemption granted. Particulars of offence read over and explained. Counsel pleaded no guilty. For evidence adjourned to 1.12.10.
- 01.12.09 - Complainant represented for evidence as last chance 1.3.10.
- 01.03.10 - Complainant absent. No representation. For Evidence 23.3.10.
- 23.03.10 - Complainant absent and applied for evidence as last chance 20.04.10
- 20.04.10 - Complainant absent and applied for evidence, no further time 27.5.10
- 27.05.10 - Complainant absent applied . For evidence. Call on 20.08.10.
- 20.08.10 - Complainant and Accused represented. Complainant prayed for time for evidence. For

evidence call on 29.10.10.

- 20.10.10 - Complainant applied for evidence. From the proceedings paper it can be seen that more than sufficient opportunities has already been given to the complainant to adduce evidence. But so far complainant is not turned up to adduce evidence. If that complainant is not ready to adduce evidence on the adjourned date, the complainant shall stand dismissed. For complainant evidence as last chance. Call on 19.11.10.

- 19.11.10 - Complainant filed petition for joint trial. For objection and hearing as joint trial and for evidence call on 7.12.10.

- 7.12.10 - Complainant prayed for time for evidence. Call on 13.1.11.

- 13.01.11 - Complainant applied. Accused absent. For evidence call on 27.1.11.

- 27.01.11 - Joint trial of the case along with S.T.201/07 is already allowed. For evidence no further time. Last chance. Call on 25.2.11.

- 25.02.11 - Complainant and Accused represented. Complainant applied for time for evidence. Accused's counsel strongly opposed the application stating that the complainant is only to harass the accused. I perused that proceedings paper. It can be seen that the case is posted for evidence since 7.12.10. Complainant even did not file proof affidavit and with showing any genuine and convincing ground prays for time for evidence. Hence I am of the considered view that the complainant show no bona fide and the further adjournment will not serve any purpose other than the wrong the time if this court. Hence the complaint is dismissed u/s.256 Cr.P.C. Accused is acquitted."

4. A perusal of the proceedings extracted above would reveal that though there can be only one last chance after posting the matter for evidence even after granting adjournment as last chance the complainant was given further chances on several occasions. Even though the case was posted on 1.12.2009 for evidence of the complainant as last chance and posted to 1.3.2010 the complainant was absent on that day and there was no representation. Even then the court posted the matter on 23.3.2010 for evidence and on that day also complainant was absent and he applied for time for giving evidence as last chance and the case was posted to 20.4.2010. On that day also the complainant was absent and again he applied for further time in that regard. Observing that no further time could be granted the court adjourned the matter to 27.5.2010. On 27.5.2010 also the complainant was absent. Still, the court posted the matter for evidence on 19.7.2010. On that day also complainant was absent and he again made an application and it was posted to 20.8.2010. On 20.8.2010 also there was only representation on behalf of the complainant and the complainant sought for time for evidence. The court again posted the matter on 29.10.2010. The proceedings of the court on 29.10.2010 assumes relevance in the context of this case. It would reveal that on that day also the complainant applied for evidence and forming the

opinion, on perusal of the proceedings paper, that sufficient number of opportunities were granted to the complainant to adduce evidence, however, the complainant did not adduce evidence on the adjourned dates it was posted to 19.11.2010 with the observation that in case the complainant failed to get ready to adduce evidence on the adjourned date the complaint would stand dismissed. On 19.11.2010 the complainant filed a petition for joint trial and again it was posted for evidence on 7.12.2010. On 7.12.2010 the complainant prayed for time for adducing evidence. Then it was adjourned to 13.1.2011. On 13.1.2011 also the complainant applied and it was posted for evidence on 27.1.2011. On 27.1.2011 observing that joint trial of the case along with S.T.No.201 of 2007 was already allowed it was ordered that no further time would be granted for evidence and as a last chance the case was posted to 25.2.2011. On 25.2.2011 when the case was posted virtually, the complainant was absent and he was represented. The complainant applied for time for evidence and the counsel for the accused opposed the application. After perusing the proceedings paper the court passed the impugned order whereby the complaint was dismissed under Section 256 Cr.P.C. and the accused was consequently acquitted.

5. The position obtained from the proceedings paper would undoubtedly show that the court below was justified in arriving at the conclusion that the appellant herein was not serious in prosecuting the matter and he is getting adjourned solely for the purpose of harassing the accused. In the context of the contentions, it is relevant to refer to the scope and application of Section 256, Cr.P.C. Going by the same, if the court is of the view that it is proper to adjourn the hearing of the case to some other day owing to some reason it could adjourn the matter provided the complainant is represented by a pleader for conducting the prosecution. The 2nd condition is that the court should arrive at a finding that the personal attendance of the complainant is not necessary on that day and his attendance could be dispensed with and the matter could be proceeded further. However, in this case, it is evident that a number of times the case was posted for evidence of the complainant. The proceedings extracted above would reveal that taking note of the continuous prayer of the appellant for adjournment of the case for adducing evidence despite the continued posting of the case for the evidence of the complainant, the court arrived at the conclusion that the request of the appellant/complainant lacks bonafide and the matter was sought to be adjourned solely for the purpose of harassing the accused. To consider the sustainability of the said order this Court had

to consider the question whether the case could have been proceeded further in the absence of the complainant on that day. Evidently, the case was posted on that day for the evidence of the complainant. As noticed hereinbefore, on several occasions the case was posted for evidence and it is interesting to note that the case was in fact, posted as a last chance on a number of occasions. It was that fact which constrained the court to make a specific order to the effect that in case of failure on the part of the appellant to adduce evidence on 19.11.2010 the matter would stand dismissed. The subsequent proceedings would reveal that even after making such observation the trial court inclined to grant further adjournments to the appellant to enable him to adduce evidence. It is such continued requests of the appellant for adjournments and the number of adjournments granted that constrained the court below to make an observation that the request for adjournment was made without any bona fides and it was made only to harass the accused. True that, the discretion which is available in view of the provisions under Section 256 Cr.P.C. has to be exercised judicially and fairly in criminal justice. Justice means justice to both sides. If after making a person as an accused the complainant refuses to give evidence and seeking adjournments after adjournments ignoring the caution given by the court the complaint would be dismissed and in case of further

failure the court can only invoke the power under Section 256(1) Cr.P.C. In the said circumstances, I do not find any reason to hold that the court below had exercised the discretion under Section 256(1) Cr.P.C. unfairly or the matter could have been considered further after dispensing with the attendance of the appellant. When sufficient opportunities have been granted to a party to adduce evidence in a matter which was taken on file in 2007 the action on the part of the trial court in dismissing the matter after affording such opportunities in the year 2011 and that too in the manner as expatiated earlier, it cannot be said to be suffering from any legal infirmity warranting interference of this Court. There is no reason to interfere with the impugned judgment.

This appeal is liable to fail and accordingly, it is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS