

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

CRL.A.No. 1494 of 2011 ()

AGAINST THE ORDER IN CC 780/2010 of J.F.C.M - VI, ERNAKULAM DATED
23-12-2010

AGAINST THE ORDER IN CrI.L.P. 707/2011 of HIGH COURT OF KERALA DATED
16-08-2011

APPELLANT(S)/PETITIONER IN CRL.L.P.:

BABU.K., AGED 37 YEARS,
S/O.P.E.KESHAVAN, PADIKANDATHIL, EDAVATTOM PO
THALAYOLAPARAMBU, KOTTAYAM DISTRICT.

BY ADVS.SRI.A.T.ANILKUMAR
SMT.V.SHYLAJA

RESPONDENT(S)/RESPONDENT:

1. K.C.PETER, S/O.CHACKO, AGED 51 YEARS,
KOYIKKARA HOUSE, CHERUPUSHPAM LANE, KALOOR,
KOCHI-17.

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

R1 BY ADV.SRI.N.M.MOHAMMED AYUB
R2 BY PUBLIC PROSECUTOR SMT.M.G.LISHA.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
16-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 1494 of 2011

Dated this the 16th day of October, 2015

J U D G M E N T

The complainant in a proceeding under Section 138 of the Negotiable Instruments Act, is the appellant herein. The case, after the appearance of the accused was posted on several occasions and ultimately to 23.12.2010. On that day, the complainant and the counsel were absent. The Court below, by the impugned order dismissed the complaint and acquitted the accused invoking Section 256(1) of the Cr.P.C. This is assailed in this appeal.

2. Heard both sides and examined the records.

3. It is an admitted fact that the complainant and his counsel were absent on that day. However, it is mentioned in the appeal memorandum that according to the appellant the case was transferred to the present Court and transferred date, was not known to the counsel. Consequently, the appellant and his counsel could not be present on that day.

4. The impugned order itself indicates that, a personal notice was given to the complainant. However, this is seriously disputed by the learned counsel for the appellant by stating that to her information, no separate individual notice was served on

the appellant and had such a notice been served, the appellant would have appeared. It is further contended that, as per the practice only common notice indicating the cases and the names of the counsel are published in the notice board.

5. Without going into the merits, it can be seen that the matter has been pending for quite sometime. The amount involved is ₹7,00,000/-. In the above circumstances, it cannot be normally be presumed that after having filed a complaint, one would voluntarily remain lethargic and refrain from prosecuting the matter, unless there are sufficient and cogent reasons. In the above back ground, I am inclined to believe the version of the learned counsel for the appellant. In the above circumstances, the impugned order 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 for enabling the complainant to prosecute his case in accordance with law. Both sides shall appear before the Court below on 07.12.2015.

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

P. A. to Judge