

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

CRL.A.No. 1500 of 2011 ()

AGAINST THE ORDER IN CC NO.719/2008 of J.M.F.C.-II, KOCHI-5 DATED
30.11.2009

AGAINST THE ORDER IN CrI.L.P. 577/2011 of HIGH COURT OF KERALA DATED
15.07.2011

APPELLANT(S)/COMPLAINANT:

T.K. SHAKEER HUSSAIN, AGED 42 YEARS,
S/O.T.K.KUNJU MUHAMMED, VII/1163, MEPARAMBU HOUSE,
KAPPALANDI MUKKU, KOCHI - 682 002.

BY ADV. SRI.V.M.KURIAN

RESPONDENT(S)/ACCUSED & STATE:

1. MR.BEJOY M.K., S/O. KAMALASANAN,
MOOMTHUNKAL HOUSE, KANICHUKULANGARA.P.O, CHERTHALA
ALAPPUZHA DISTRICT - 688 544.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM - 682 031.

R1 BY ADV. SRI.G.SUBRAMANIAN

R2 BY PUBLIC PROSECUTOR SMT.M.G.LISHA.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
13-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CRL.A.No. 1500 of 2011 ()

APPENDIX

PETITIONER'S EXHIBITS

TRUE COPY OF THE ORDER DATED 30/11/2009 IN C.C NO. 719/2008
PASSED BY JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KOCHI

RESPONDENTS'S EXHIBITS : NIL

/TRUE COPY/

P. A. TO JUDGE

Pn

SUNIL THOMAS, J.

Crl. Appeal No. 1500 of 2011

Dated this the 13th day of October, 2015

J U D G M E N T

The complainant in C.C. No.719/2008, who instituted a complaint on an allegation that, the accused issued a cheque for a sum of ₹5,00,000/- towards the discharge of a legally recoverable debt which got dishonoured, challenges the order dated 30.11.2009, by which the complaint was dismissed and the accused was acquitted invoking Section 256 of the Cr.P.C.

2. According to the complainant, after the institution of the complaint, summons was issued to the accused and ultimately he appeared. Thereafter, there were several postings, on which dates he was present personally or effectively represented through his counsel. Ultimately, the matter was posted to 30.11.2009, on which day, neither the complainant nor the counsel was present. Consequently, the complaint was dismissed.

3. Heard both sides and examined the records.

4. The reason stated by the appellant for the absence is that, the case which was posted originally to 30.09.2009 was

adjourned to 17.11.2009, but by a mistake it was wrongly taken down by the Clerk as 27.01.2010. The appellant claims that, on 27.01.2010, he was present along with his counsel and found that the case was not called. On enquiry, it was revealed that, the case stood posted to 17.11.2009 and on that day, since there was no representation it was adjourned to 24.11.2009; on that day also, there was no representation and ultimately the case was adjourned to 30.11.2009. The learned counsel for the respondent who opposed the prayer contended that, the impugned order itself indicates that the Court below has given sufficient opportunity to the complainant, inspite of he remaining absent continuously.

5. The only question that arises is whether the contention of the appellant that his Clerk wrongly took the date as 17.11.2009 is to be believed or not. The certified copy of the impugned order itself indicates that, it was applied for on 02.02.2010. This tallies with his case that the posting date was wrongly taken as 27.01.2010. Further, the learned counsel for the appellant submitted that, the accused appeared after repeated summons and after issuing warrant. It appears that, the complaint was filed in 2008 and was dismissed on 30.11.2009,

indicating that atleast for a period of 2 years he has been prosecuting the matter diligently. The cheque amount is ₹5,00,000/-. In the above circumstance, there is nothing to presume that the complainant is likely to knowingly remain absent and invite an adverse order.

6. Though legally the Court below was perfectly justified in passing the order, considering the above facts, I feel that, one more opportunity can be granted to the complainant to adduce evidence, in the interest of justice. Hence, 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 a fresh consideration for enabling the complainant to prosecute the matter. Both sides shall appear before the Court below on 03.12.2015. On that day, the complainant shall be present in person and offer himself for adducing evidence. The Court below shall regulate its proceeding, in accordance with law, thereafter.

Sd/-

SUNIL THOMAS, JUDGE.