

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

CRL.A.No. 1561 of 2011 ()

**AGAINST THE ORDER IN CC 147/2008 of CHIEF JUDICIAL MAGISTRATE, ALAPPUZHA
DATED 19.04.2011**

**AGAINST THE ORDER IN CrI.L.P. 740/2011 of HIGH COURT OF KERALA DATED
18-08-2011**

APPELLANT/COMPLAINANT:

**DURGA MURALI @ KANNAN, AGED 40 YEARS,
S/O.RAMASWAMI, DRUGA NIVAS, S.K.P.COLONY
PITHU IYER JUNCTION, ALAPPUZHA**

BY ADV. SRI.S.RAJEEV

RESPONDENTS/ACCUSED/STATE:

**1. STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM**

**2. V.S.KANNAN, AGED ABOUT 36 YEARS,
PROPRIETOR, PERUNTHANNI, KANNAN COIR MILLS
VAZHICHERRY, ALAPPUZHA-688001**

**R1 BY ADV. BINDU GOPINATH, PUBLIC PROSECUTOR
R2 BY ADV. SRI.C.S.MANU**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17-03-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

K. ABRAHAM MATHEW, J.

Crl.Appeal No. 1561 of 2011

Dated this the 17th day of March, 2015

JUDGMENT

This appeal arises from the order of acquittal passed by the Learned Chief Judicial Magistrate, Alappuzha. The appellant was the complainant and the 2nd respondent, the accused. The latter was alleged to have committed the offence under Section 138 of the Negotiable Instruments Act. On 19.04.2011 the learned Magistrate acquitted the 1st respondent under Section 256(1) Cr.P.C. Legality of this order is challenged in this appeal.

2. Heard the learned counsel for the appellant and the learned counsel for the 1st respondent.

3. Admittedly, the appellant filed an affidavit in lieu of the examination-in-chief, which was accepted by the learned Magistrate. The case was posted for cross-examination of the appellant. As the 1st respondent failed to cross-examine the appellant, the trial court closed the evidence and posted the case for examination of the 1st respondent under Section 313 Cr.P.C. The 1st respondent filed an application under Section 311 Cr.P.C. later. That was allowed. The appellant then failed to appear for

cross-examination. It was then the learned Magistrate passed the impugned order.

4. The fact that the learned Magistrate accepted the affidavit of the appellant filed in lieu of examination in chief shows that trial started and evidence was recorded in the case. After the trial started, the learned Magistrate was not justified in acquitting the 1st respondent under Section 256(1) Cr.P.C. She should have considered the effect of non-appearance of the appellant for cross-examination and passed an order on merits. The impugned order is illegal.

In the result, this appeal is allowed. The impugned order of acquittal is set aside. The matter is sent back. The parties shall appear before the trial court on to 22.04.2015. On that day, the Court shall fix a date for the appearance of the 1st respondent for cross-examination. If he does not turn up, the learned Magistrate may proceed with the case in accordance with the law.

**SD/-
K. ABRAHAM MATHEW,
JUDGE**