

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

CRL.A.No. 1638 of 2011 ()

AGAINST THE ORDER IN CC 218/2010 of JUDICIAL FIRST CLASS MAGISTRATE
COURT-II, CHENGANNUR DATED 29.11.2010

AGAINST THE ORDER IN Cr1.L.P. 780/2011 of HIGH COURT OF KERALA DATED
25-08-2011

APPELLANT/COMPLAINANT:

MATHEW K.JOH,KALARICKAL THARAYIL HOUSE,
ERAMANNUR, THRIPERUTHRA, CHENGANNUR PO
ALAPPUZHA.

BY ADVS.SRI.P.VINODKUMAR
SRI.T.K.AJITH KUMAR

RESPONDENT/ACCUSED & STATE:

1. JACOB PUNNOSE,PUTHEN PURACKAL,
PAVUKKARA, KURITTISSERY, CHENGANNUR
ALAPPUZHA, DISTRICT 689 121.

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

R2 BY ADV. PUBLIC PROSECUTOR: SMT M G LISHA
R1 BY ADV. SRI.P.HARIDAS
R1 BY ADV. SMT.S.SIKKY
R1 BY ADV. SMT.LIJI KUTTAPPAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

=====

Crl.A.No.1638 of 2011

=====

Dated this the 26th day of October, 2015

JUDGMENT

The appellant is the complainant before the court below who filed a proceeding under Section 138 of the Negotiable Instruments Act on the basis of a cheque that was dishonoured. After the appearance of the accused, his plea was recorded on 27.03.2010 and the case was posted to 19.11.2010 for recording the evidence. On that day, the complainant was absent and the case was again adjourned to 29.11.2010 with a specific direction for the complainant to appear and to tender the evidence. On that day also, complainant was absent and consequently, learned magistrate dismissed the complaint and acquitted the accused invoking Section 256(1) of the Cr.P.C. This is under challenge in this appeal.

2. Heard both sides. Since the matter is contested on admitted facts, even without calling for records, the appeal itself is disposed of.

3. Admittedly, the case was posted to 19.11.2010 for evidence of the complainant. On that day, both the complainant and his counsel were absent. Thereafter, the case was adjourned to 29.11.2010 and on which day, the complainant and his counsel

were absent. It appears that in spite of absence of the complainant on 19.11.2010, the court below had taken a reasonable view to grant one more opportunity to the complainant to appear and to tender evidence. In the circumstance, the impugned order is not illegal.

4. Learned counsel for the complainant submitted that the case was originally filed as C.C.No.1077 of 2009 and was pending before the Judicial First Class Magistrate-I, Chengannur. After recording the plea, the case was posted after a long duration. In the meanwhile, it appears that the case was transferred to Judicial First Class Magistrate-I, Chengannur. According to the learned counsel for the petitioner by an inadvertent omission, there was no representation on 19.11.2010. Thereafter, on getting information on 29.11.2010 regarding the transfer, when the appellant rushed to the Court, it was understood that the accused has already been acquitted and the complaint dismissed.

5. Though this aspect is not borne on records. I am inclined to believe it prima facie, since the certified copy of the impugned order indicates that the copy application was filed on 29.11.2010. Evidently, on the date of the dismissal of the complaint, the copy application was filed. Further, after having

filed the complaint in 2009 and having prosecuted it till November 2010, it cannot reasonably be presumed that the complainant would remain negligent and invite adverse order of dismissal of his own complaint. Having regard to these facts, I feel that in the interest of justice, complainant can be granted one more opportunity to prosecute the matter.

In the result, the appeal is allowed. Impugned order is set aside and the matter is remanded to the court below for fresh consideration after giving reasonable opportunity to the complainant to tender his evidence. Both sides shall appear before the court below on 11.12.2015. Having regard to the fact that the complaint is of 2009, court below shall try to dispose of the complaint as expeditiously as possible.

Sd/-

SUNIL THOMAS
Judge

Sbna

True Copy /

P.A to Judge