

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

CRL.A.No. 1655 of 2011 ()

AGAINST THE ORDER IN CrI.L.P. 705/2011 of HIGH COURT OF KERALA DATED
09-08-2011

AGAINST THE JUDGMENT IN CC 609/2010 of J.M.F.C., PATTAMBI DATED
07.05.2011

APPELLANT(S)/COMPLAINANT:

V.ALI, AGED 60 YEARS, S/O.AHAMMED,
VENGOTTIL VEEDU, KODUMUNDA P.O, OTTAPALAM TALUK
PALAKKAD DISTRICT.

BY ADV. SRI.P.JAYARAM

RESPONDENT(S)/ACCUSED:

1. C.AKBER, AGED 40 YEARS,
S/O.AMINA TEACHER, CHANGOVANTHODI VEEDU,
MENNEMKKODE P.O, PULASSERY VIA, OTTAPALAM TALUK
PALAKKAD DISTRICT, PIN 679 307.

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

R1 BY ADVS. SMT.T.D.RAJALAKSHMI

SRI.R.SREEHARI

R2 BY PUBLIC PROSECUTOR SRI.REJI JOSEPH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
12-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 1655 of 2011

Dated this the 12th day of October, 2015

J U D G M E N T

The appellant herein filed a complaint against the accused invoking Section 138 of the Negotiable Instruments Act. After the initial proceedings, the case came up before the learned Magistrate on 07.05.2011. On that day, neither the complainant nor his counsel were present. Hence, the learned Magistrate by the impugned order dismissed the complaint and acquitted the accused invoking Section 256 of the Cr.P.C. This is challenged in this appeal.

2. Heard both sides and examined the records. It appears that, the complaint was taken on file in 2010 and thereafter the matter has been pending till 07.05.2011, on the date on which the complaint was dismissed. According to the learned counsel for the appellant, which is not disputed by the learned counsel for the 1st respondent, that the matter was posted on that day for the appearance of the accused. Evidently, the presence of the complainant was not mandatory on that day. However, there was no representation either. In the above circumstance, the learned Magistrate was well within his

jurisdiction to pass appropriate orders.

3. However, in the appeal memorandum it is stated that, the appellant was laid up with jaundice and he had informed the counsel, who had in turn entrusted the matter with another counsel, who failed to make effective representation. In the above circumstance and considering the fact that, the case was posted formally for the appearance of the accused, Court could have exercised the jurisdiction by adjourning the case to another day. Considering the fact that the cheque amount is ₹50,000/- and the complainant is deprived of his chance to prosecute the matter on merits, I feel that interest of justice demands remanding the matter to the Court below after setting aside the order.

5. 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, after giving an opportunity to the complainant to prosecute his case, in accordance with law. Both sides shall appear before the Court below on 30.11.2015.

**Sd/-
SUNIL THOMAS, JUDGE.**

/true copy/

P. A. to Judge

Pn