

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

CRL.A.No. 1756 of 2011 ()

AGAINST THE ORDER IN CrI.L.P. 873/2011 of HIGH COURT OF KERALA DATED 29-09-2011

AGAINST THE JUDGMENT IN ST 50/2010 of J.M.F.C.-X, THIRUVANANTHAPURAM DATED 09-11-2010

APPELLANT/COMPLAINANT:

LEKHA.G., AGED 48 YEARS,
D/O.LATE GOWRIKUTTY AMMA, RESIDING AT 'UTHRITTATHI'
K.P.I 1263, PRIYADARSHINI LANE, MUTTADA.P.O.
THIRUVANANTHAPURAM.

BY ADVS.SRI.SIDHARTH A.MENON
SRI.V.AJAKUMAR
SRI.T.M.CHANDRAN

RESPONDENT(S)/ACCUSED:

1. MR.VENU SIVARAJAN,
S/O.SIVARAJAN, AGED 39 YEARS, POIKAVILA
EDATHARA WARD, POTHENCODE PANCHAYATH, POTHENCODE.P.O.
THIRUVANANTHAPURAM. PIN-695 584.

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

R2 BY PUBLIC PROSECUTOR SMT.M.G.LISHA
R1 BY ADVS. SRI.BLAZE K.JOSE
SRI.A.N.SHAJI (MURAMEL)

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 1756 of 2011

Dated this the 27th day of October, 2015

J U D G M E N T

The appellant is the complainant in S.T. No.50/2010 for offence punishable under Section 138 of the Negotiable Instruments Act, on the strength of a dishonoured cheque for a sum of ₹1,50,000/-. After the appearance of the accused, the case stood posted to 09.11.2010. On that day, both the parties were absent and there was no representation. Holding that the complainant was regularly absent, the accused was acquitted by the impugned judgment. This is under challenge in this appeal.

2. Notice was served on the 1st respondent who has filed vakalath. Heard and examined the records.

3. It is an admitted fact that, the case stood posted to 09.11.2010. It is not clear from the impugned order as to whether it was posted as a last chance for recording evidence. However, the learned counsel for the appellant invited my attention to the fact that the complaint was filed as S.T. No.1508/2008 and was pending before the Judicial First Class Magistrate Court-II, Thiruvananthapuram. After several postings, the case was

transferred to the Judicial First Class Magistrate Court-X, Thiruvananthapuram and renumbered as S.T.No.50/2010. The reason stated for not appearing on the relevant day was that, the Advocate Clerk omitted to take note of the date of posting. It is also stated that, the transfer of the case to that Court was also not brought to the notice of the counsel. It is further submitted that, on getting information, the counsel rushed to the court, when it was found that case stood already dismissed and accused acquitted.

4. It is evident that, the matter has been pending before the Court atleast from 2008 till the date of its dismissal on 09.11.2010. The amount involved is substantial. Considering these facts, it cannot easily be presumed that one would remain negligent and invite an adverse order. Having regard to these facts, I feel that one more opportunity could have been granted to the complainant, especially when the impugned order does not disclose that the case stood posted for evidence and that the presence of the complainant was essential on that day. Hence the impugned judgment is liable to be set aside.

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 granting a reasonable opportunity to the complainant to adduce evidence.

Both sides shall appear before the Court below on 09.12.2015.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn