

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

CRL.A.No. 1782 of 2011 ()

AGAINST THE ORDER IN Cr1.L.P. 742/2011 of HIGH COURT OF KERALA DATED
18.08.2011

AGAINST THE ORDER IN CC 455/2009 of JUDICIAL FIRST CLASS MAGISTRATE-I,
CHALAKUDY DATED 07.01.2011

APPELLANT/COMPLAINANT:

KORATTY HIRE PURCHASE, VADAKKUMPADAM
TOWERS, KORATTY, REP.BY ITS MANAGING PARTNER
PAULOSE, AGED 45 YEARS, EDAPULAVAN HOUSE
RAYANPURAM P.O., CHELAMATTAM, ERNAKULAM DISTRICT

BY ADVS.SRI.S.K.SAJU
SRI.A.RANJITH NARAYANAN
SRI.V.C.VALSAN

RESPONDENTS/ACCUSED & STATE:

1. SATHISH S/o.BHASKERAN, CHERPPUKKARAN
HOUSE, PERAMBRA DESOM, PERAMBRA P.O.
PIN-680689, THRISSUR DIST

2. STATE OF KERALA,
REPRESENTED THROUGH THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, 682031

BY PUBLIC PROSECUTOR: SMT. M. G. LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.1782 of 2011

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Dated this the 03rd day of December, 2015

JUDGMENT

The appellant herein as the complainant initiated prosecution under Section 138 of the Negotiable Instruments Act on the strength of a dishonoured cheque for a sum of Rs.20,450/-. Pursuant to the summons issued, the accused appeared and thereafter, the case was posted on several dates. Ultimately, it stood posted to 07.01.2011. On that day, the accused was represented. The court below, holding that the complainant was absent continuously and the case stood posted for hearing finally under Section 256(1) of the Cr.P.C., dismissed the complaint and acquitted the accused. This order is under challenge in this appeal.

2. In spite of service of notice on the first respondent, he has not appeared to contest the proceedings. Heard the learned counsel for the appellant. Since the appeal itself can be disposed of on the basis of the available records, lower court records are not awaited.

3. It is an admitted fact that the complainant was absent on the date of posting. The impugned order does not specifically state whether the counsel represented the complainant though, in the absence of a specific recording that the counsel was absent, it can safely be presumed that the counsel represented the complainant. In the appeal memorandum, the appellant had stated that the complainant was laid up due to illness and counsel for the respondent sought for an adjournment or even that the matter may be taken up after lunch. It is stated that in spite of the above, the Court proceeded with the proceedings. If there is nothing to substantiate that the complainant was laid up or that the counsel pleaded for taking up the matter after lunch, this averment remains uncontroverted due to the absence of the first respondent.

4. It is pertinent to note that the complaint was filed in the year 2009. Complainant has been prosecuting the matter till January 2011. There is nothing on record to show that an adjournment was sought to protract the proceedings or with malafide motives. Hence, in the light of the decision reported in **Chettinad Cement Corporation Ltd. v. Rugmini Steels (2014 (3) KLT SN 3 (C.No.3)**, I am inclined to grant one more

opportunity to the complainant to prosecute the matter. 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 after granting the appellant a reasonable opportunity to prosecute his matter. Both sides shall appear before the court below on 15.01.2016. In the event of the accused remaining absent, court below shall issue fresh summons to the accused and ensure his presence.

Sd/-
SUNIL THOMAS
Judge

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True Copy /

P.A to Judge