

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. 1811 of 2011 ()

AGAINST THE ORDER IN CrI.L.P. 812/2011 of HIGH COURT OF KERALA DATED
01-09-2011

AGAINST THE JUDGMENT IN CC 276/1997 of J.M.F.C., PALA DATED
22-12-2005

APPELLANT(S)/COMPLAINANT:

THOMAS VARGHESE, VARIKKASSERIYIL,
VELLAPPALLY BUILDINGS, ARUNAPURAM, PALA,
REP. BY THE POWER OF ATTORNEY HOLDER, DR.SAJU JOSEPH
VARIKKAMAKKAL HOUSE, P.P.ROAD, PALA.

BY ADV. SRI.B.KRISHNA MANI

RESPONDENT(S)/ACCUSED:

1. K.B.KUMAR (VIJAYAKUMAR K.B.), PARTS
DEPARTMENT, P.B.NO.91, RIYAD - 11411, SAUDI ARABIA,
RESIDING AT KIZHAKKE PURAKKAL, CHENNAMANGALAM,
ERNAKULAM 683 512.

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

R1 BY ADV. SRI.S.RAJEEV

R2 BY PUBLIC PROSECUTOR SRI.ABHIJITH LESLIE.

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. 1811 of 2011

Dated this the 27th day of October, 2015

J U D G M E N T

The appellant, as the complainant, had filed a complaint alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, on the strength on a cheque for a sum of ₹5,71,000/-. After several postings, the case stood posted to 22.12.2005. On that day, neither the complainant nor the counsel was represent. He did not also furnish the correct address of the accused. Consequently, the appeal was dismissed. This is under challenge in this appeal.

2. Heard both sides and examined the records.

3. It is an admitted fact that the complainant and his counsel were absent on 22.12.2005. Admittedly, steps were also not taken by furnishing the correct address of the appellant. This is attributed to the fact that the counsel omitted to inform the client. The fact that the matter was pending atleast from 1997 onwards till 2005, when it stood dismissed, shows that the complainant has been diligently prosecuting the matter. The amount involved is also substantial. Considering these facts, I am

inclined to grant one more opportunity to the appellant to prosecute the case.

4. In the result, the appeal is allowed. The impugned order is set aside and the matter is remanded to the court below to enable the complainant to prosecute his case. Since first respondent has already appeared before this Court, fresh notice to accused need not be sent.

Both sides shall appear before the Court below on 10.12.2015.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P.A. to Judge

Pn