

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

CRL.A.No. 1836 of 2011 ()

AGAINST THE JUDGMENT IN CC 2195/2008 of JUDICIAL FIRST CLASS
MAGISTRATE COURT- IV, ERNAKULAM DATED 19-08-2009

AGAINST THE ORDER IN Cr1.L.P. 830/2011 of HIGH COURT OF KERALA DATED
19-09-2011

APPELLANT(S)/COMPLAINANT::

INDIAN BANK, M.G.ROAD BRANCH,
ERNAKULAM, REPRESENTED BY ITS CHIEF MANAGER.

BY ADVS.SRI.M.K.CHANDRAMOHAN DAS
SMT.K.K.RAZIYA

RESPONDENT(S)/ACCUSED::

1. STATE OF KERALA, REP.BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. MR.C.V.JACOB, D-14, GCDA OFFICERS
QUARTERS, GANDHI NAGAR, KOCHI
NOW WORKING AS SECTION OFFICER, GCDA, KADAVANTHARA
KOCHI-20.

R1 BY PUBLIC PROSECUTOR SMT.M.G.LISHA
R2 BY ADV. SRI.AGINOV MATHAPPAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
15-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 1836 of 2011

Dated this the 15th day of October, 2015

J U D G M E N T

The appellant Bank had laid a complaint alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, on the strength of a cheque for a sum of ₹45,367/-. It was dishonoured on presentation on the ground of insufficiency of funds. After issuing the statutory notice, the complaint was laid. The case was thereafter posted for evidence as last chance to 19.08.2009. On that day, neither the complainant nor the counsel was present. Consequently, the Court below dismissed the complaint and acquitted the accused invoking Section 256 Cr.P.C. This is under challenge in this appeal.

2. Heard both sides.

3. It is on record that, on the date of impugned order the counsel and the complainant were absent. Hence, legally the Court was justified in passing an appropriate order, having posted the case as last chance. However, the learned counsel for the appellant has explained in the appeal memorandum that, on that day the client was ready with the proof affidavit and the necessary documents and on the way to the Court, the counsel got stuck in a traffic jam. Since the matter had been pending from 2008 till the date of order, on

19.08.2009, it indicates that the complainant has been prosecuting diligently atleast during the above period. Hence I feel that, it cannot be presumed that after having lodged the complaint one would knowingly remain lethargic and invite a dismissal of his own complaint. In the above back ground, I am inclined to believe the version of the learned counsel for the appellant as disclosed in the appeal memorandum. Hence one more opportunity can be granted to the petitioner to prosecute the case on merits.

4. In the light of the above, the impugned order is liable to be set aside. Both sides fairly submitted that, the complainant being a Bank, an attempt to settle the matter amicably can also be resorted to, if the Bank is in a position to make a reasonable concession. The Court below shall explore this possibility also.

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 the matter. Both sides shall appear before the Court below on 07.12.2015.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn