IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

CRL.A.No. 1845 of 2011 (A)

AGAINST THE ORDER IN Crl.L.P. 414/2011 of HIGH COURT OF KERALA DATED 09-06-2011

AGAINST THE ORDER IN ST 1743/2008 of JUDICIAL 1ST CLASS MAGISTRATE, OTTAPALAM DATED 09-12-2009

PETITIONER/COMPLAINANT:

MOIDUTTY MASTER, AGED 56 YEARS,
S/O.KUNJEETHU, MELETHIL VEEDU, IRUMBALASSERI.P.O
NELLAYA VIA, OTTAPALAM.

BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.K.RAVI (PARIYARATH)

RESPONDENT(S)/ACCUSED AND STATE OF KERALA:

1. RAJEEV, AGED 40 YEARS,
S/O.RAJARAM,
KUDIYIRIKKAL VEED, IRUMBALASSERI.P.O, NELLAYA
VIA OTTAPALAM 678 001.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA AT
ERNAKLULAM - 682 031.

R2 BY PUBLIC PROSECUTOR SRI.ABHIJITH LESLIE.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Pn

SUNIL THOMAS, J.

Crl. Appeal No. 1845 of 2011

Dated this the 13th day of October, 2015

J U D G M E N T

The complainant in a proceeding under Section 138 of the Negotiable Instruments Act, is the appellant herein. He filed the present complaint along with two other complaints against the accused alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, after issuing a statutory notice. Pursuant to the complaint, the accused appeared and after several postings the matter was posted to 09.12.2009. On that day, the complainant was not present, though the counsel was present. On the ground that the complainant was not present for adducing oral evidence in spite of direction and that no petition to condone his absence was filed, the complaint was dismissed and the accused was acquitted under Section 256 Cr.P.C. Aggrieved by the above order, the appellant has preferred this appeal.

2. In spite of notice served on the 1st respondent accused, he has not appeared and there is no representation also. Heard the learned counsel for the complainant and examined the records.

3. It is an admitted fact that, the complainant was not present for adducing the oral evidence. The impugned order itself discloses that, the matter was posted for adducing evidence. It also clearly indicates that, though he was represented by a counsel, no application to condone the delay of the complainant was filed. Evidently, in the absence of a written request for adjournment, the Court was disabled from ascertaining as to whether the complainant was absent due to any bonafide valid reasons.

4. In the appeal memorandum it is specifically stated that, the complainant was laid up due to fever and headache and the matter was communicated to the counsel. The impugned order itself reveals that, he was properly represented though no reason is stated as to why the learned counsel did not file an application. However, it is clear that, the matter has been pending since 2008. Evidently, the complainant had been prosecuting the matter till date of its dismissal. It is also clear that, on the date of dismissal, the complainant was represented by a counsel. Having considered these two facts, I feel that, it cannot be legitimately expected that a client who moves the

Court and prosecutes the matter for long period will remain lethargic and invite the dismissal of the complaint, unless cogent reasons are there.

5. Having regard to the above facts, I feel that, a lenient view is liable to be taken and the complainant can be given one more opportunity to prosecute his case on merits. 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 affording an opportunity to the complainant to offer himself for examination. Both sides shall appear before the Court below on 03.12.2015. On that day, the complainant shall also be present and offer himself for examination. In the event of the accused remaining absent, the Court below will be free to order fresh summons to procure his presence.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn