

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

CRL.A.No. 1866 of 2011 ()

AGAINST THE ORDER IN CrI.L.P. 872/2011 of HIGH COURT OF KERALA DATED
29-09-2011

AGAINST THE ORDER IN CC 113/2010 of SPL.J.M.F.C. (MARADU CASES),
KOZHIKODE DATED 30-10-2010

APPELLANT(S)/COMPLAINANT:

M/S.KERALA STATE CO-OPERATIVE BANK LTD,
KOZHIKODE BRANCH, P.B.NO.556, M.M.ALI ROAD,
CALICUT - 673 002. REP. BY ITS SENIOR MANAGER.

BY ADVS.SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.BENOJ C AUGUSTIN
SRI.SEBIN THOMAS
SRI.K.RAVIKUMAR, SC, KERALA STATE COOPERATIVE BANK
LTD.
SRI.GEORGE POONTHOTTAM, SC, KERALA STATE CO.OP BANK
LTD.

RESPONDENT(S)/ACCUSED & STATE:

1. SUNIL KUMAR.M., S/O.LATE SEKHARAN,
H.NO.VI/211, MANDODI HOUSE, NORTH BEPORE P.O.
KOZHIKODE DISTRICT 673 015.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
SESSIONS COURT,
ERNAKULAM.

R1 BY ADV. SRI.VINOD SINGH CHERIYAN
R2 BY PUBLIC PROSECUTOR SMT.M.G.LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
07-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 1866 of 2011

Dated this the 7th day of December, 2015

J U D G M E N T

The complainant, on the strength of a dishonoured cheque for a sum of ₹40,000/- initiated a proceeding under Section 138 of the Negotiable Instruments Act before the Special Judicial First Class Magistrate, Marad Cases, Kozhikode. The case, after several postings, stood listed to 30.10.2010. On that day, the complainant was absent and there was no representation. However, the accused was represented through the counsel. Holding that the complainant was absent continuously, in spite of repeated directions, the accused was acquitted invoking Section 256 Cr.P.C. This is under challenge in this appeal.

2. Heard both sides and examined the records.

3. It is an admitted fact that the complainant was absent on 30.10.2010. According to the learned counsel for the complainant, two other cases were also filed along with this case against the same accused, which were also being continuously posted. When this case actually stood posted to 08.10.2010, it was entrusted to another counsel who noted down the next posting date as 01.11.2010 in stead of 08.10.2010. Hence the

complainant was absent on the next adjourned date. It appears that, thereafter the case was posted to 21.10.2010 and 30.10.2010. On 30.10.2010 the accused was acquitted.

4. It appears that, the dismissal of the complaint and the acquittal of the accused happened because of a wrong posting date on the file. The complainant was absent in the above circumstances. Having regard to the principles laid down in **Associated Cement Company Ltd. V. Keshvanand (1998 (1) SCC 687)**, I am inclined to take a lenient view. The complainant has been diligently prosecuting the matter till it was dismissed on 30.10.2010. In the above circumstance, I am inclined to take a lenient view and to give one more opportunity to the complainant to prosecute the matter.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remitted to the Court below to enable the complainant to prosecute his case. Both sides shall appear before the Court below on 18.01.2016.

**Sd/-
SUNIL THOMAS, JUDGE.**

/true copy/

P. A. to Judge