

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

CRL.A.No. 1934 of 2011 ()

AGAINST THE ORDER IN ST 4231/2009 of JUDICIAL FIRST CLASS
MAGISTRATE, KOLENCHERRY DATED 09.08.2011

AGAINST THE ORDER IN Cr1.L.P. 921/2011 of HIGH COURT OF KERALA DATED
03-11-2011

APPELLANT/COMPLAINANT:

SHAJI GEORGE, S/O.LATE GEORGE, AGED 38
YEARS, POLLAYIL HOUSE, PUTTUMANOOR
PUTHENCROUZ P.O, PIN-682308, ERNAKULAM DISTRICT.

BY ADV. SRI.SAJI VARGHESE KAKKATTUMATTATHIL

RESPONDENTS/STATE AND THE ACCUSED:

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

2. M.A.VASU, S/O.IYYER, SUNIL NIVAS,
PULLIKAMALI KARA, MANEED P.O., PIN-682308
ERNAKULAM DISTRICT.

R2 BY ADV. SRI.ABRAHAM P.GEORGE

R2 BY ADV. SMT.M.SANTHY

BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.1934 of 2011

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Dated this the 4th day of December, 2015

JUDGMENT

The appellant as the complainant, initiated a proceeding under Section 138 of the Negotiable Instruments Act, on the basis of a cheque for a sum of Rs.50,000/- which was dishonoured on presentation. The accused appeared before the court below and thereafter, the case was adjourned and ultimately stood posted for evidence as last chance on 09.08.2011. On that day, the complainant was absent. Court below, by the impugned order, acquitted the accused invoking Section 256(1) of the Cr.P.C., on the ground that the matter was posted as last chance. The Court has also noted that there were four earlier postings for evidence and the complainant did not turn up. This order is under challenge in this appeal.

2. Heard both sides and examined the records.

3. Admittedly, the case stood posted to 09.08.2011 for evidence as last chance. It is also admitted that the complainant could not be present when the matter was taken up for evidence. Learned counsel for the appellant fairly conceded that he himself

was present in Court and that, appellant being a local body member was engaged in a meeting and requested that the matter may be taken up after lunch on a belief that the meeting would be over by that time. After lunch, the appellant could not turn up.

4. The case was filed in the year 2009. Having regard to the fact that the Court had taken a very lenient view and consecutively posted for evidence as last chance, legally, the impugned order is unassailable. However, it is also to be taken note of that the case was instituted in the year 2009 and was being prosecuted continuously by the appellant till 09.08.2011. On that day, he was also effectively represented by the counsel. Considering these facts, I feel that in the interest of justice, one more opportunity is liable to be granted to the complainant to prosecute his case. The impugned order is hence 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 to enable the complainant to prosecute his matter. Both sides shall appear before the court below on 18.01.2016.

Sd/-

SUNIL THOMAS, Judge

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True Copy /

P.A to Judge