

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

CRL.A.No. 2029 of 2011 ()

AGAINST THE ORDER IN Cr1.L.P. 885/2011 of HIGH COURT OF KERALA DATED
10.10.2011

AGAINST THE ORDER IN ST 2494/2008 of JUDICIAL FIRST CLASS MAGISTRATE-II
(MOBILE), KOTTAYAM DATED 22-06-2009

APPELLANT/COMPLAINANT:

P.M.PHILIPOSE, MANAGING PARTNER,
LOYAL BANKERS, CHERUKOLE, PULICKATHARAYIL
HOUSE, CHERUKOLE.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS/STATE AND ACCUSED:

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

2. KUNJUKUNJU DAVID, KONDOOR HOUSE,
VELOOR P.O., KOTTAYAM - 686 501.

BY PUBLIC PROSECUTOR: SRI ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.2029 of 2011

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Dated this the 13th day of November, 2015

JUDGMENT

The appellant as the complainant laid the complaint under Section 138 of the Negotiable Instruments Act alleging that a cheque for a sum of Rs.4,77,000/- issued by the second respondent was dishonoured. Pursuant to this, it was taken on file and summons was issued to the accused who appeared. There were several postings thereafter and ultimately, the case stood posted to 22.06.2009. On that day, the complainant was absent and consequently, the accused was acquitted under Section 256(1) of the Cr.P.C. This order is assailed in this appeal.

2. Heard learned counsel for the appellant. The second respondent though served with notice, remained absent.

3. It is an admitted fact that the complainant was absent on 22.06.2009. However, learned counsel has referred to paragraph 3 of the appeal memorandum wherein, it has been stated that the case stood posted to 08.04.2009, on which day, the accused appeared and was released on bail. Thereafter, it stood posted to 11.05.2009 and thereafter to 02.06.2009 on which day, it

was adjourned to 22.06.2009. It is stated that on the above two previous posting dates, complainant was present. The reason stated by the appellant for his absence on 22.06.2009 was that he was laid up with viral fever and was under the impression that the matter would be properly represented before the learned magistrate.

4. This averment remains uncontroverted in the absence of respondent. It is also pertinent to note that the complaint was originally filed in the year 2009 and complainant was prosecuting the matter atleast till 2006. The case was originally filed as C.C.No.927 of 2006 before the Judicial First Class Magistrate Court-I, Pathanamthitta, which was later transferred to Judicial First Class Magistrate Court, Kottayam. Since the date of institution, he has been prosecuting the matter till it was dismissed on 22.06.2009. There is nothing on record to show that the counsel was absent on that day. Considering these facts, the court below could have granted one more reasonable opportunity to the complainant to prosecute his matter. Hence, I feel that one more opportunity can be granted to the complainant to prosecute the matter. The impugned order is hence liable to be set aside.

In the result, the appeal is allowed. The impugned order is set aside. 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 23.12.2015. If the accused remain absent, fresh summons shall be issued to him to procure his presence. Thereafter, the court below shall proceed with the case.

Sd/-
SUNIL THOMAS
Judge

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