

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

CRL.A.No. 2203 of 2011 (A)

AGAINST THE ORDER IN CrI.L.P. 1125/2011 of HIGH COURT OF KERALA DATED
21-12-2011

AGAINST THE ORDER IN CC 1282/2007 of ADDL. CHIEF JUDICIAL
MAGISTRATE, THIRUVANANTHAPURAM DATED 20-10-2011

APPELLANT/COMPLAINANT:

M/S.KERALA STATE POULTRY DEVELOPMENT CORPORATION LTD.,
PETTAH
THIRUVANANTHAPURAM REPRESENTED BY M.B.AJAYAKUMAR
FINANCE MANAGER.

BY ADVS.SRI.K.SIJU
SMT.BINDU GEORGE

RESPONDENTS/RESPONDENTS:

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

2. P.P.UMMER
POPULAR AGENCIES, MANKADA P.O
MALAPPURAM DISTRICT. 679 324.

R2 BY ADV. SRI.P.K.NIJOY
R2 BY ADV. SMT.C.PRABITHA
R1 BY GOVERNMENT PLEADER:SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.2203 of 2011

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Dated this the 30th day of October, 2015

JUDGMENT

Appellant is the complainant who filed C.C.No.1282 of 2007 before the Additional Chief Judicial Magistrate Court, Thiruvananthapuram for offence punishable under Section 138 of the Negotiable Instruments Act on the strength of a cheque for a sum of Rs.1,65,585/-. Thereafter, the accused appeared and the matter was being posted to several days for evidence. Ultimately, it was posted to 20.10.2011 for evidence as last chance. The complainant was absent and no application was filed to condone his absence. Consequently, the accused was acquitted invoking Section 256(1) of the Cr.P.C. This is assailed in this appeal.

2. The second respondent/accused has appeared. Heard both sides. It appears that the appeal can be disposed of on the basis of the admitted facts itself.

3. It is evident that the case stood posted for evidence as last chance to 20.10.2011. The accused was present and the complainant was absent. In the above circumstance, Court cannot be found fault with for having passed such an order.

4. Learned counsel for the appellant, however brought to my notice that the case was pending since 2007. The accused was acquitted in 2011. Evidently, the matter was being prosecuted by the complainant diligently. The appellant has also referred to the earlier posting date of 11.11.2010 and 02.03.2011 that the case stood adjourned by notification. It cannot be assumed that in the above circumstance, especially when the amount involved is substantial, complainant would purposefully would remain absent and invite an adverse order. Court would have been justified in granting one more opportunity to the complainant to prosecute the matter. In the circumstance, I feel that a lenient view is liable to be taken. Hence, I am inclined to allow the appeal.

In the result, the appeal is allowed. 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 16.12.2015.

Sd/-

SUNIL THOMAS
Judge

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