IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 29TH DAY OF JULY 2024 / 7TH SRAVANA, 1946

CRL.A NO. 799 OF 2023

AGAINST THE ORDER/JUDGMENT DATED IN Crl.L.P. NO.376 OF 2022 OF HIGH COURT OF KERALA ARISING OUT OF THE ORDER/JUDGMENT DATED IN ST NO.742 OF 2019 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,AMBALAPUZHA

APPELLANT/S:

CHINNAMMA @ THRESIAMMA P.E
AGED 59 YEARS
MANNAPARAMBIL VEEDU, SANATHANAPURAM P.O.,
KALARCODE, ALAPPUZHA DISTRICT., PIN - 688003
BY ADV R.SATISH KUMAR

RESPONDENT/S:

1. **THANIYA P @ USHA SASI**
   AGED 61 YEARS
   SHAJI NIVAS, PUNNAPRA P.O., ALAPPUZHA
   DISTRICT., PIN - 688003
2. **STATE OF KERALA**
   REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN – 682031
   BY PUBLIC PROSECUTOR SRI C N PRABHAKARAN

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 29.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BABU, J

Crl.A No.799 of 2023

Dated this the 29th day of July, 2024

O R D E R

The challenge in this appeal is to the order dated 15.10.2022 acquitting the accused under Section 256 of the Cr.P.C in S.T No.742/2019 on the file of the Judicial First Class Magistrate Court, Ambalapuzha. The appellant was the complainant. She filed a complaint alleging offence punishable under Section 138 of the Negotiable Instruments Act,1881. The complainant alleged that the accused executed a cheque for a sum of Rs.3,50,000/- (Rupees Three Lakhs and Fifty Thousand only) drawn on the Allahabad Bank, Alappuzha Branch and the same was returned dishonored stating the reason ‘account closed‘. The complainant caused to issue a lawyer’s notice, which the accused received, but refused to return the amount covered by the cheque.

2. The learned Magistrate took cognizance of the offence and issued summons to the accused. On 15.10.2022, due to the absence of the complainant the learned Magistrate acquitted the accused under Section 256 Cr.P.C.

3. Notice has been served on the party respondent. There is no representation for him.

4. I have heard the learned counsel for the appellant/complainant and the learned Public Prosecutor.

5. The learned counsel appearing for the appellant/complainant submitted that on 15.10.2022, the complainant was undergoing treatment for ‘b/l knee Kellgren-Lawrence Grade IV Osteoarthritis‘ and that she was not even in a position to walk. The learned counsel for the appellant relied on Annexure-I Medical Certificate to substantiate his contention. The complainant filed the complaint on 07.08.2019 and she has been diligently prosecuting the matter. I am of the view that the

complainant has established sufficient reason for her non-appearance on 15.10.2022.

6. Having regard to the circumstances brought out, I am of the view that the complainant be given an opportunity to adduce evidence in the matter. Therefore, the order dated 28.12.2019 acquitting the accused stands set aside. S.T No.742/2019 on the file of the Judicial First Class Magistrate Court, Ambalapuzha is restored.

7. The learned Magistrate shall proceed with the matter in accordance with law. The parties are directed to appear before the Trial Court on 21.08.2024.

The appeal is allowed as above.

Sd/-

K.BABU JUDGE

kkj