
(2012) 03 KL CK 0220
In the High Court Of Kerala
Case No : Criminal A. No. 1568 of 2009

Alex

APPELLANT

Vs

Ajil S. L. Lin and The State of Kerala

RESPONDENT

Date of Decision : 15-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 256
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2012) 03 KL CK 0220

Hon'ble Judges : V.K.Mohanan, J

Bench : Single Bench

Advocate : S. Santhosh Kumar, for the Appellant; Sabu S. Kallaramoola, for R1 and Smt. S. Hyma, Public Prosecutor for R2, for the Respondent

Judgement

Justice V.K. Mohanan

1. The complainant in a prosecution for the offence punishable u/s 138 of the Negotiable Instruments Act, 1881 (for short "the N.I.Act") is the appellant since it is aggrieved by the judgment dated 18.1.2007 in S.T.No. 75 of 2006 of the court of Judicial First Class Magistrate-III, Kollam, by which the learned Magistrate acquitted the accused u/s 256 of the Cr.P.C. The counsel for the appellant submits that though the case was filed as early as in the year 1998, the accused was absconding and hence on 11.4.2003 the case was transferred to the long pending register and subsequently the accused was arrested on 10.11.2004. It is the further submission of the learned counsel that again the accused absconded and subsequently, he surrendered on 20.4.2005. According to the learned counsel, on 13.9.2006 as per the order of the Chief Judicial Magistrate, the case was transferred to JFCM-III, Kollam, since originally the case was pending before the CJM court and thereafter when the case was pending in the transferee court, there was a move for settlement. According to the learned counsel, as evident from the B'diary proceedings of the court, the move for settlement was recorded by the learned Magistrate as per the

proceedings dated 2.12.2006 and subsequently the case was posted to 15.1.2007 as last chance for settlement, and since there was no sitting on that date, the case was adjourned to 18.1.2007. According to the learned counsel, the clerk attached to the counsel appearing for the appellant in the trial court, noted down the date as 18.2.2007 instead of 18.1.2007, and when the case was called on 18.1.2007, nobody was present, consequently the learned Magistrate issued the impugned order. It is also the submission of the learned counsel that, the cheque in question covers an amount of Rs. 60,000/- and therefore one more opportunity may be given to the complainant to prosecute the matter on merit.

2. I have carefully considered the submission of the learned counsel for the appellant who handed over the certified copy of the B'diary proceedings for my perusal and I have also perused the impugned judgment. On a perusal of the B'diary proceedings, I am satisfied that because of the absence of the accused, the proceedings of the court below was protracted. It is also discernible from the B'diary proceedings that there was a move for settlement. As per the proceedings dated 2.12.2006, the learned Magistrate has recorded, "Complainant present. Accused absent, applied. Allowed. Almost settled. Settlement pay as last chance to 15.1.2007." Considering the above facts and circumstances, according to me, one more opportunity can be given to the complainant to prosecute the matter, especially when the cheque in question covers an amount of Rs. 60,000/- and as there is no decision on merit, though cognizance was taken by the trial court for the offence punishable u/s 138 of NI Act on the basis of the complainant preferred by the appellant connected with the dishonour of the cheque. But considering the laches on the part of the appellant/ complainant in appearing before the trial court on the date of the impugned order, such an opportunity can be given only on terms.

In the result, this appeal is disposed of setting aside the order dated 18.1.2007 in S.T.No. 75 of 2006 of the court of Judicial First Class Magistrate-III, Kollam, on condition that the appellant/complainant deposits a sum of `2,500/- (Rupees Two Thousand Five Hundred only) within one month from today, in the trial court. Accordingly, the appellant/complainant and the respondent/accused are directed to appear before the trial court on 17.4.2012, on which date the learned Magistrate is directed to restore the complaint on file and on his satisfaction that the appellant/complainant depositing the amount as directed above, the learned Magistrate is further directed to proceed with the trial of the case in accordance with the procedure and law and dispose of the same on merit. It is made clear that if there is any failure on the part of the appellant either in appearing before the court on the date fixed for his appearance and depositing the above amount within the time stipulated above, this order will stand vacated and consequently this appeal will also stand dismissed. In case the appellant/complainant complies with the above direction, and on the appearance of the accused, a sum of `1,500/- , out of the above amount, shall be given to the accused and the remaining amount of `1,000/- shall be deposited in the State Exchequer. As the case pertains to the year 2006, the learned Magistrate is directed to expedite the

trial of the case as expeditiously as possible.

The Criminal Appeal is disposed of as above.