

(2012) 10 KL CK 0075
In the High Court Of Kerala
Case No : Criminal A. No. 121 of 2004

C. Jayaprakashan, Chamakkalayil House, Chelavoor P.O. APPELLANT
Moozhikkal Virippil, Kozhikode

Vs

M.K. Manoj Kumar, "Ganga", Thazhethu Velloor House, Civil RESPONDENT
Station P.O. Calicut and State of Kerala

Date of Decision : 19-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 256(1)
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2012) 10 KL CK 0075

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

Bench : Single Bench

Advocate : K. Praveen Kumar, for the Appellant; T.Y. Laliza, 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 as he is aggrieved by the order dated 20.10.2003 in S.T. No. 1792 of 2002 of the court of the Judicial First Class Magistrate-I, Kozhikode by which the learned Magistrate acquitted the accused in his complaint u/s 256(1) of Cr.P.C. Heard the counsel for the appellant. Though notice is served on the first respondent, nobody has turned up and no objection is raised against allowing this appeal.

2. Counsel for the appellant submitted that the cheque in question covers an amount of Rs. 38,000/- and as per the proceedings of the trial court, the case was adjourned from 21.2.2003 and posted on 27.6.2003, but there was no sitting in the said court on that day and therefore, under notification, the case was adjourned and posted to 26.11.2003. It is the further case of the counsel that on 26.11.2003, when the appellant/complainant appeared, his case was not called and on verification, it was realised that his case was called in advance date

i.e., on 20.10.2003 and the impugned order was passed. In support of the above contention, the learned counsel has invited my attention to Annexure I notice published in the trial court on 27.6.2003, which is produced in the leave petition. On perusal of Annexure I, it can be seen that S.T. No. 1792 of 2002 which stood posted on 27.6.2003, was adjourned and posted to 26.11.2003. Therefore, the submission made by the learned counsel appears to me correct. But, the impugned order shows that on 20.10.2003, the complainant was not present and no application was filed and hence, the accused was acquitted u/s 256(1) of the Cr.P.C.

3. I have considered the submission made by the learned counsel for the appellant. In the light of Annexure-I, it appears that though S.T. No. 1792 of 2002 was posted on 26.11.2003 by notification dated 27.6.2003, the case was called on 20.10.2003 and disposed of the same. The impugned order is cryptic in nature and no details are furnished so as to see whether the appellant/complainant was negligent in prosecuting the case etc. Therefore, this Court is not in a position to ascertain whether the learned Magistrate has applied his mind and whether he is justified in invoking Section 256(1) of the Cr.P.C. However, it is relevant to note that though the court has taken cognizance for the offence u/s 138 of the N.I. Act, based upon the complaint preferred by the appellant connected with the dishonour of cheque for Rs. 38,000/-, there is no decision on merit. It is also not discernible whether the accused had appeared or not. According to me, in the above circumstances, it is only just and proper to grant one more opportunity to the appellant/complainant to prosecute the matter on merit and to have a decision thereon.

In the result, this appeal is disposed of setting aside the order dated 20.10.2003 of the court of the Judicial First Class Magistrate-I, Kozhikode in S.T. No. 1792 of 2002. Accordingly, the appellant/complainant is directed to appear before the trial court on 19.11.2012 on which date, the learned Magistrate is directed to restore the complaint on file and proceed with the trial of the case in accordance with the procedure and law and dispose of the same on merit. As the case pertains to the year 2004, the learned Magistrate is directed to expedite the trial and dispose of the case as expeditiously as possible.

This Criminal Appeal is disposed of as above.