
(2012) 03 KL CK 0191

In the High Court Of Kerala

Case No : Criminal A. No. 447 of 2009

Dony Abraham, Puthenveetil House, North Janatha Road,
Palarivattom, Ernakulam

APPELLANT

Vs

State of Kerala and K.G. Suku

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

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

Citation : (2012) 03 KL CK 0191

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

Bench : Single Bench

**Advocate : S.M. Prem, Smt. K.P. Santhi and Sri. P.K. Nijoy By, for the Appellant;
Laliza T.Y. Public Prosecutor By R1 and Sri. Sajeevan Kurukkuttiyullathil, By 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 of acquittal recorded by the trial court u/s 256(1) of the Code of Criminal Procedure.
2. Counsel for the appellant submitted that the appellant was prosecuting the complaint effectively and he had filed proof affidavit, but when the case comes up for evidence on 30.12.2008, the appellant/complainant could not appear before the court below as he was laid up and his counsel also failed to appear before the court as he had engaged in another court. Therefore, the counsel submitted that an opportunity may be given to the complainant to prosecute the matter on merit, especially when the cheque in question covers an amount of Rs. 1 lakh.
3. I have carefully considered the submission of Learned Counsel for the appellant. From the submission of the Learned Counsel and from the appeal

memorandum, it appears that the court below has already taken cognizance upon the complaint preferred by the appellant connected with dishonour of cheque covers an amount of Rs. 1 lakh, but there is no decision on merit. Though counsel for the appellant submitted that the complainant was laid up, no material is produced either before the trial court or before this Court to substantiate the above grounds. Besides the above, counsel for the complainant has also failed to appear before the court below and represent the complainant. Therefore, the learned Magistrate is justified in acquitting the accused u/s 256(1) of the Cr.P.C. But, having regard to the facts and circumstances of the case, especially when the cheque in question covers an amount of Rs. 1 lakh and though there was failure on the part of the complainant in appearing before the court below on 30.12.2008, considering the fact that the complainant was prosecuting the matter effectively, it is only just and proper to grant one more opportunity to the complainant. Such opportunity can be given only on terms since the complainant himself failed to explain the reasons for his absence on the date of the impugned order and for non-representation.

4. In the result, this appeal is disposed of setting aside the order dated 30.12.2008 of the court of Additional Chief Judicial Magistrate (Economic Offences), Ernakulam in C.C. No. 90/2007 on condition that the appellant/complainant deposits a sum of Rs. 1500/-(Rupees One Thousand Five Hundred only) in the trial court within one month from today. Accordingly, the appellant/complainant is directed to appear before the trial court on 02.04.2012 on which date, the learned Magistrate is directed to restore the complaint on file and on his satisfaction that the appellant/complainant deposits a sum of Rs. 1500/-(Rupees One Thousand Five Hundred only) in the court below as directed above, he 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. Out of the sum of Rs. 1500/-, Rs. 1000/-(Rupees One Thousand only) shall be given to the accused and the remaining Rs. 500/-(Rupees Five Hundred only) shall be deposited in the State Exchequer. It is made clear that if there is any failure on the part of the appellant either in depositing the amount mentioned above within the time or in appearing before the court below on the date fixed for his appearance, this order will stand vacated and consequently, the above appeal will stand dismissed. In case the appellant/complainant complies with the above direction and proceeds with the inquiry and trial of the case, the learned Magistrate is directed to expedite the proceedings and dispose of the case as expeditiously as possible as the case pertains to the year 2007

5. This Criminal Appeal is disposed of as above.