

(2014) 12 KL CK 0085

In the High Court Of Kerala

Case No : Criminal Appeal No. 214 of 2011

Irinjalakuda Co-Operative Agricultural and Rural
Development Bank Ltd.

APPELLANT

Vs

Baby Sidhartha

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 205 254(1) 256(1) 378(4)
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2014) 12 KL CK 0085

Hon'ble Judges : Alexander Thomas, J

Bench : Single Bench

Advocate : V.G. Arun and T.R. Harikumar, Advocate for the Appellant; M.R. Dhanil, Advocate and R. Rema, Public Prosecutor, Advocate for the Respondent

Judgement

Alexander Thomas, J.—This appeal has been filed under Section 378(4) of the Code of Criminal Procedure to impugn the order dated 26.11.2010 of the Judicial First Class Magistrate Court, Chalakkudy in the Calendar Case, C.C. No. 573 of 2009, whereby the accused therein was acquitted under Section 256(1) of the Cr.P.C. The Calendar Case arose out of a private criminal complaint filed by the appellant herein alleging that the accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act for the dishonour of the alleged cheque in question. The court below in the impugned order held that the complainant absented continuously and that he was also absent on 26.1.2010, on which day the case was posted for evidence and accordingly, the court below proceeded to dismiss the complaint due to absence of the complainant and ordered acquittal of the accused (respondent No. 1) herein under Section 256(1) of the Cr.P.C. It is this order rendered on 26.11.2010 under challenge in this appeal.

2. Heard Sri V.G. Arun, learned counsel appearing for the appellant, Sri M.R. Dhanil, learned counsel appearing for the 1st respondent and the learned Public Prosecutor appearing for the 2nd respondent State.

3. The complainant in the instant case is Irinjalakuda Co-Operative Agricultural and Rural Development Bank Ltd., which is a society registered under the Kerala Co-Operative Societies Act. The 1st respondent (accused) had availed a loan of Rs. 1 lakh on 16.12.2006 from the Mala branch of the appellant bank after executing necessary loan documents and after availing loan, the 1st respondent committed default and presented the cheque in question for Rs. 26,300/- bearing date 11.12.2009, which was dishonoured, which led to the instant private criminal complaint alleging offence punishable under Section 138 of the Negotiable Instruments Act, it is averred. It is further stated in paragraph No. 3 of the appeal memorandum that the complaint was filed on 21.04.2009 and cognizance was taken after taking sworn statements of the Secretary of the bank and the case was subsequently posted to 29.05.2009, 04.09.2009 and 17.08.2009. Thereafter the case was posted on 18.12.2009, on which day counsel for the accused appeared and filed an application under Section 205 of the Cr.P.C. for exempting the accused from personal appearance. The case was thereafter posted on 25.05.2010, 27.08.2010, 08.10.2010 and 15.11.2010 for evidence. On 15.11.2010 there was no sitting and the case was adjourned to 26.11.2010, it is averred. As the incumbent holding the post of Secretary of the bank, who had instituted the complaint on behalf of the bank, was suffering from illness, an application was filed on his behalf to dispense his personal appearance for the day. But, the learned Magistrate without considering the said application proceeded to acquit the accused under Section 256(1) of the Cr.P.C., it is stated.

4. The learned counsel appearing for the appellant bank pointed out that whenever the complainant was absent, necessary applications permitting such absence was also filed before the court below showing cogent reasons for such absence as the Secretary of the bank has duties and responsibilities in the bank to take care to the needs of the bank and its customers. The absence of the complainant on the posting date was only due to this reason and not due to any willful or deliberate absence and that on 26.11.2010 an application was submitted on behalf of the complainant to dispense his personal appearance for the day but that the same was not considered and the learned Magistrate proceeded to acquit the accused as per the impugned order. It is further urged that in the case Joseph Vs. State of Kerala, , this Court has held that a court can acquit an accused under Section 256(1) of the Cr.P.C. only on either of the two days, viz, i) the day appointed for "appearance" of the accused, if summons has been issued or ii) any day subsequent thereto, to which the "hearing" may be adjourned and that the expression "any day subsequent thereto, which the hearing may be adjourned" appearing in Section 256(1) of Cr.P.C. refers to the day immediately succeeding the day appointed for appearance of the accused and after recording the plea of not guilty and that such day of "hearing" is the day falling in between the day fixed for appearance of the accused (and recording of plea) and the day to which the case is posted for "evidence" under Section 254(1) of the Cr.P.C. That Section 254(1) of the Cr.P.C. mandates that (if the accused pleads not guilty), the court "shall" adjourn the case to hear the

prosecution and the word used in Section 254(1) is, "shall" and the procedure is mandatory and hence, after recording the plea of not guilty in summons cases, trial courts shall, without fail, post the case for hearing and it shall not instead, straight away post the case for evidence etc.

5. After hearing the learned counsel for the appellant and the learned counsel for the 1st respondent, this Court is of the considered opinion that in the facts and circumstances of this case, it is necessary to remit the matter to the court below so that a decision is rendered by the court below on merits after reasonable opportunity to both sides. The appellant bank is a Co-operative institution and therefore, the non-consideration of the application submitted by the Secretary of the bank in his capacity for the complainant for absence on 26.11.2010, was not proper. Accordingly, the impugned order is set aside. The Calendar Case stands restored to the file of the Judicial First Class Magistrate Court, Chalakudy. The court below shall render a decision thereon on merits after affording reasonable opportunity to both sides and in accordance with law. Taking into account that the Calendar Case is of the year 2009, it is further ordered in the interest of justice that the court below shall endeavour to ensure that the case is finally disposed of within a period of six months from the date of production of a certified copy of this judgment.

With these observations and directions the Crl. Appeal stands disposed as indicated above.