
(2010) 11 KL CK 0326
In the High Court Of Kerala
Case No : Criminal A. No. 304 of 2004

Jayanandan S.

APPELLANT

Vs

Susan Jimmy and State Of Kerala

RESPONDENT

Date of Decision : 11-11-2010

Acts Referred:

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

Citation : (2010) 11 KL CK 0326

Hon'ble Judges : M.L. Joseph Francis, J

Bench : Single Bench

Advocate : B. Raman Pillai, for the Appellant; No Appearance, for the Respondent

Final Decision : Allowed

Judgement

M.L. Joseph Francis, J.—This appeal is filed by the complainant in S.T. No. 285 of 2000 on the file of the Chief Judicial Magistrate Court, Palakkad against the order of acquittal of the accused u/s 256(1) Code of Criminal Procedure dt. 16.10.2003. Respondents 1 and 2 herein are accused 1 and 2 in that case, which was filed by the complainant alleging commission of the offence u/s 138 of the N.I. Act involving a cheque for Rs. 1 lakhs.

2. The learned Counsel for the appellant submitted that when the case was posted for trial on 16.10.2003, the appellant/complainant could not be present in court as he was laid up and the counsel for the complainant filed a petition for excusing the absence of the complainant. The learned Chief Judicial Magistrate dismissed that petition and the accused were acquitted u/s 256(1) Cr.P.C.

3. u/s 256 Cr.P.C, when the complainant is absent, the Court can proceed in either of the three ways: (i) it may acquit the accused or (ii) adjourn the case or (iii) proceed to hear the case under the proviso if the complainant is represented by an advocate or by the officer conducting the prosecution or if the personal attendance of the complainant is not considered necessary. An order u/s 256 of

the Code of Criminal Procedure, which operates as a final order barring a fresh complaint should be passed after proper application of mind and sound exercise of judicial discretion. Each case has to be examined in its own context to determine as to whether there has been proper exercise of the discretion vested in the Court.

4. Since the complainant filed an application for adjournment on the ground of illness, the acquittal of the accused u/s 256(1) Code of Criminal Procedure is improper and that order has to be set aside in the interests of justice.

5. Accordingly this appeal is allowed and the order of acquittal u/s 256(1) Code of Criminal Procedure in S.T. No. 285 of 2000 on the file of the Chief Judicial Magistrate Court, Palakkad is set aside and the learned Chief Judicial Magistrate is directed to proceed with the trial of the case in accordance with law. Both parties are directed to appear before the concerned Court on 15.12.2010 for further proceedings.