

(2014) 12 KL CK 0084
In the High Court Of Kerala
Case No : Criminal Appeal No. 935 of 2011

Meena Kumary

APPELLANT

Vs

K.K. Surendran

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

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

Citation : (2014) 12 KL CK 0084

Hon'ble Judges : Alexander Thomas, J

Bench : Single Bench

Advocate : Vincent Joseph, Advocate for the Appellant; S. Sachithananda Pai, Advocate and R. Githesh, Public Prosecutor, Advocate for the Respondent

Judgement

Alexander Thomas, J.—This appeal is instituted under Section 378(4) of the Code of Criminal Procedure to impugn the order rendered on 27.11.2010 by the Judicial First Class Magistrate Court-I, Mavelikkara in Calendar Case, C.C. No. 624 of 2009 on the file of that court. The Calendar Case arose out of a private criminal complaint filed by the appellant herein alleging that the accused therein (1st respondent herein) had committed the offence punishable under Section 138 of the Negotiable Instruments Act for the alleged dishonour of the cheque in question for an amount of Rs. 4 Lakhs. The court below passed the impugned order virtually dismissing the complaint due to the absence of the complainant on 27.11.2010 thereby leading to the acquittal of the accused under Section 256(1) of the Cr.P.C.

2. Heard Sri. Vincent Joseph, learned counsel for the appellant, and Sri. S. Sachithananda Pai, learned counsel appearing for the 1st respondent and the learned Public Prosecutor appearing for the 2nd respondent State of Kerala.

3. It is averred in the appeal memorandum that the 1st respondent (accused) has willfully and deliberately absent after taking bail before the court below. It is further averred that on 27.11.2010, the appellant (complainant) was actually

available in the court verandah when the matter was called and that she could not be present before the court below as another person by name Smt. Veena Kumari (who is the petitioner in M.C. No. 59/2010 which was listed before the court below on the same day), mistakenly thought that her name was called out. The appellant's name is Meena Kumary. It is thus stated that when the court below realized that the said Veena Kumari is not the complainant in the present case, had presumed that the appellant is absent and accordingly, acquitted the accused as per the impugned order. It is submitted by the learned counsel for the appellant that when the case was called, the complainant's counsel was not present and the complainant was not properly briefed so as to deal with the situation and therefore, when the above said Smt. Veena Kumary had turned up before the court when the name of the complainant herein (Meena Kumary) was called on, she could not effectively deal with the said scenario and it is these aspects that led to the passing of the impugned order. The learned counsel for the appellant would also rely on the decision of this Court in Joseph Vs. State of Kerala, wherein it has been held that a court can acquit an accused under Section 256(1) of the Cr.P.C. only on either of the two days mentioned therein 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 it cannot be invoked on the day on which the case is posted for evidence as in the instant case etc. The learned counsel for the appellant would also rely on paragraph 24 of the above said decision reported in Joseph Vs. State of Kerala, wherein this Court deprecated the practice of the Magistrate Court whereby accused are acquitted even in the fag end of the case, giving untenable reasons, such as it is a long-pending case and it is included in the target; the complainant is not adducing evidence despite repeated directions, the case is posted as last chance for evidence, the presence of accused cannot be procured despite coercive steps taken etc. and that those are not reasons at all to acquit the accused under Section 256(1) of the Cr.P.C.

4. After hearing the learned counsel for the appellant and the learned counsel for the 1st respondent, this Court is of the considered opinion that the impugned order needs to be interfered with so as to facilitate the rendering of a decision on merits by the court below after affording reasonable opportunity to both sides. Accordingly, the impugned order is set aside and the Calendar Case, C.C. No. 624 of 2009 shall stand restored to the file of the Judicial First Class Magistrate Court-I, Mavelikkara. The court below shall render a decision on merits after affording reasonable opportunity to both sides and in accordance with law. Having regard to the fact that the calendar case was instituted in the year 2009, the court below shall endeavour to finally dispose of the case within an outer time limit of six months from the date of production of a certified copy of this judgment.

With these observations and directions the CrI. Appeal stands allowed as indicated above.