

(2012) 03 KL CK 0222

High Court Of Kerala

Case No: Criminal A. No. 706 of 2009

George Kizhakkumassery

APPELLANT

Vs

Biju Varghese, Auto Gas Energy
India Limited, 39/141, M.G. Road
Ravipuram, Kochi - 682016 and
State of Kerala

RESPONDENT

Date of Decision: March 15, 2012

Acts Referred:

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

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

Bench: Single Bench

Advocate: John Joseph Roy, for the Appellant; S. Hyma, Public Prosecutor, for the Respondent

Judgement

Justice V.K. Mohanan

1. As the parties in the above two appeals are one and the same and the order challenged in these appeals are one and the same and issued by the same court and the facts and circumstances involved in the cases are similar, especially when the impugned order passed is u/s 256(1) of Cr.P.C., these appeals are heard together and being disposed of by this common judgment. CrI.A.No. 706 of 2009 is preferred against the judgment dated 24.12.2008 in C.C.No. 46 of 2008 (old No. 537 of 2006) and CrI.A.No. 966 of 2009 is preferred against the judgment dated 24.12.2008 in C.C.No. 13 of 2008 (old No. 1411 of 2005) and in both the cases the cheque in question covers an amount of Rs. 3,00,000/- . Both appeals are at the instance of the complainant in the above cases, which was launched against the respondent/accused alleging offence punishable u/s 138 of NI Act.

2. Learned counsel for the appellant submitted that, the appellant/complainant was not aware of the fact that the cases were posted on the date of the impugned order that too as last chance and the appellant, being a social worker and a trade unionist, was not in station and hence he could not appear before the court and therefore there was no wilful laches or negligence on the part of the appellant in appearing before the court below. It is the further submission of the learned counsel that since the cheque in question covers an amount of Rs. 3 lakhs, in both the cases, one more opportunity may be given to the complainant to prosecute the matter on merit.

3. I have carefully considered the submissions of the learned counsel for the appellant and I have perused the order impugned in these appeals. In the light of the facts stated in the impugned order, it can be seen that on previous posting dates prior to the date of the impugned order, several opportunities were given to the complainant to adduce evidence and the case was finally posted for evidence of the complainant with a rider that, no further time will be granted and adjourned it as last chance. As the complainant was absent on the date fixed for his evidence, I cannot find fault with the findings of the court below. But it is relevant to note that though the complainant was absent, he was represented by his counsel and an application was seen filed to excuse his absence. It is also a fact that though the court took cognizance for the offence punishable u/s 138 of the NI Act, connected with the dishonour of a cheque for Rs. 3 lakhs in both the cases, there is no decision on merit. Under the above circumstances, according to me, it is only just and proper to grant one more opportunity to the complainant to prosecute the matter on merit and to have a decision thereon. Since there was laches on the part of the complainant in appearing before the court below, though the case was specifically posted for evidence of the complainant as last chance, according to me, further opportunity can be given only on terms.

In the result, these appeals are disposed of setting aside the joint order dated 24.12.2008 of the court of the Judicial First Class Magistrate-II, Perumbavoor, in C.C.No. 46 of 2008 and C.C.No. 13 of 2008, on condition that in each case, the appellant/complainant deposits a sum of Rs. 2,500/- (altogether Rs. 5,000/-) in the trial court within one month from today. Accordingly, the appellant/ complainant is directed to appear before the trial court on 17.04.2012 on which date, the learned Magistrate is directed to restore the above two cases on file and on his satisfaction that the appellant/complainant deposits a sum of Rs. 2,500/- in each case (altogether Rs. 5,000/-) 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. 2,500/- in each case, Rs. 1,500/- in each case shall be given to the accused and the remaining Rs. 1,000/- in each case 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 in each case 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

appeals will stand dismissed. In case the appellant/complainant complies with the above direction and co-operates with the inquiry and trial of the cases, the learned Magistrate is directed to expedite the proceedings and dispose of the cases as expeditiously as possible as the case pertains to the year 2008.

These Criminal Appeals are disposed of as above.