

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.K.MOHANAN

MONDAY, THE 31ST MAY 2010 / 10TH JYAISTHA 1932

CRL.A.No. 838 of 2010()  
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CC.1914/2008 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI  
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APPELLANT: COMPLAINANT  
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GEORGE AUGUSTINE.T.J,S/O.JOSEPH.T.J,  
AGED 42 YEARS,RESIDING AT THAZHUPPIPARAMBIL HOUSE,  
KANNAMALI.PO,KATTIPARAMBU,KOCHI-682 008.

BY ADV. SRI.JOHNSON P.JOHN

RESPONDENT: STATE AND ACCUSED  
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1. STATE OF KERALA,REPRESENTED BY THE  
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM,  
KOCHI-31.

2. JOJAN.P.J,S/O.P.K.JOSEPH,AGED 30 YEARS,  
PUNNAKKAL HOUSE,H.NO.CC 22/390,THOPPUMPADY.PO,  
SANTHON JUNCTION,KOCHI-682 005.  
PRESENTED ADDRESS;C/O.GRACY TEACHER(RETIRED),  
KOKKALA HOUSE,NEAR MARIYA BHAVAN,KUMBALANGHI.PO,  
KOCHI-682 007.

R1 BY P.P. SRI C.M. KAMMAPPU.

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION  
ON 31/05/2010, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:



**V.K.MOHANAN, J.**

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**Crl.A No. 838 of 2010**  
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Date d 31<sup>st</sup> Day of May, 2010

**ORDER**

In this appeal, the challenge is against the order passed by the learned Magistrate under section 256(1) of Cr.P.C acquitting the accused in a prosecution for the offence under section 138 of the Negotiable Instruments Act.

2. The counsel for the appellant/complainant submitted that though steps were taken much earlier to the date of the impugned order, the accused entered appearance only on 16.1.2010 and he was enlarged on bail and that too was on his production on arrest. Thereafter the case was adjourned to 23.1.2010 and subsequently to 5.2.2010 and finally to 11.2.2010. The learned counsel submitted that after the appearance of the accused, there was only three posting dates and the complainant was ready to file proof affidavit on the date of the impugned order.



3. From the impugned order, it appears that the complainant was absent and accused was exempted. The learned counsel submitted that the complainant was absent in the morning as he is a government employee and he was ready to appear in court after the lunch time of the court.

4. Going by the materials and pleadings, it can be seen that the cheque in question covers an amount of Rs.50,000/-. The accused entered appearance only on 16.1.2010. If that be so, I am of the view that one more opportunity can be given to the complainant to prosecute the matter on merit. But from the impugned order, it appears that no application was filed to excuse the absence of the complainant. Under the above circumstances, I am of the view that this appeal can be disposed of setting aside the impugned order only subject to terms.

5. In the result, this appeal is disposed of setting aside the order dated 11.2.2010 in C.C.



No.1914/2008 of the court of Judicial First Class Magistrate-I, Kochi, on condition that the complainant shall deposit a sum of Rs.1500/- in the court below. Accordingly, the appellant/complainant is directed to appear before the trial court on 30.6.2010 on which date the learned Magistrate is directed to restore the complaint on file on his satisfaction that the appellant/complainant deposits a sum of Rs.1500/-, and to proceed with the complaint in accordance with the procedure and law and to dispose of the same on merit. On deposit of the amount as directed above, Rs.1000/- shall be paid to the accused on his appearance and the remaining amount shall be deposited in to the State Ex chequer.

This Appeal is disposed of accordingly.

**V.K.MOHANAN,  
JUDGE.**

Kvm/-



CRL.A.838/10

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