

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

MONDAY, THE 31ST DAY OF DECEMBER 2012/10TH POUSHA 1934

CRL.A.No. 2074 of 2009 (D)

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CRLP.852/2009 DATED 06-10-2009  
CC.1162/2007 of J.M.F.C.-I,HOSDRUG

PETITIONER/APPELLANT/COMPLAINANT:

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EKKAL KUNHIRAMAN, AGED 45 YEARS,  
S/O. KALU, PRESIDENT OF KATTUKULANGARA,  
SREE KUTHIRAKKALI AMMA DEVASTHANAM,  
P.O.ANANDASHRAM, AJANUR VILLAGE, HOSDURG TLUK.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS/ACCUSED:

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1. V.BALACHANDRAN, AGED 38 YEARS,  
SECRETARY, PUDUKAI VAININGAT SREE VAIRAJATHAN  
EASWARANTE KSHETRA COMMITTEE, P.O.UPPILIKAI,  
PUDUKAI VILLAGE.
  2. C.V.KRISHNAN, AGED 57 YEARS,  
TREASURER, PUDUKAI VAININGAT SREE VAIRAJATHAN  
EASWARANTE KSHETRA COMMITTEE, P.O.UPPILIKAI,  
PUDUKAI VILLAGE.
  3. PUDUKAI VAININGAT SREE VAIRAJATHAN  
EASWARANTRE KSHETRA COMMITTEE, P.O.UPPILIKAI,  
PUDUKAI VILLAGE.
  4. STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.

PUBLIC PROSECUTOR SRI.K.K.RAJEEV

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON  
31-12-2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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**Crl.A.No.2074 of 2009**  
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**Dated this the 31<sup>st</sup> day of December, 2012**

**JUDGMENT**

The complainant in a prosecution for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I.Act') is the appellant as he is aggrieved by the order dated 06/08/2009 in C.C.No.1162 of 2007 of the court of the Judicial Magistrate of the First Class-I, Hosdurg by which the learned Magistrate acquitted the accused under Section 256(1) of the Cr.P.C.

2. Heard the learned counsel for the appellant. Though notices were ordered against respondents, only R2 signed but he is neither present nor represented. Notice to R1 was returned unserved stating that whereabouts are not known.

3. Having regard to the facts and circumstances involved and especially in the light of the order which I

propose to pass in the above appeal and safe-guarding the interest of the accused, I am of the view that notice to the respondents' on whom service are not completed can be dispensed with.

4. The learned counsel for the appellant submitted that actually the case was specifically posted for the evidence of the complainant only on 27/02/2009, on which date it was adjourned to 10/06/2009 and finally to 6/8/2009 and on all those days the complainant was represented. It is the further case of the appellant that, on 6/8/2009 the complainant had to attend another case in the Judicial First Class Magistrate Court-II, Hosdurg and therefore, when the present case was taken in the present trial court, the agent of the complainant and a junior counsel attached to the counsel for the complainant in the trial court were present and made representation but the same was not heard by the learned Magistrate and consequently issued the present order. Thus, according to the learned counsel, there was no negligence from the part of the appellant/complainant in

prosecuting the matter. It is also the submission of the counsel that, against the very same accused, several other cases of similar nature are pending and thus the counsel submits that one more opportunity may be given to the appellant to prosecute the matter on merit.

5. I have carefully considered the submissions made by the learned counsel for the appellant.

6. Though the learned counsel submits several facts in support of his challenge against the order impugned in this appeal, those submissions are not supported by any material or evidence. However, it is relevant to note that, though the learned Magistrate has stated that the complainant was willfully absent to adduce evidence, according to me, the said observation and finding of the learned Magistrate are not supported by any data or materials. Though the learned Magistrate has stated, that the case was posted for the evidence of the complainant since 24/01/2008, no details are stated. It is also relevant to note that, though the court has taken cognizance for the offence punishable under Section 138

of N.I. Act connected with the dishonour of cheque for an amount of ₹1,20,000/-, based upon the complaint preferred by the appellant, there is no decision on merit. In the above circumstances, according to me, even though there is some lapse on the part of the complainant, one more opportunity can be given to the complainant to prosecute the matter on merit but subject to terms.

In the result, this appeal is disposed of setting aside the order dated 06/08/2009 of the court of the Judicial Magistrate of the First Class-I, Hosdurg in C.C.No.1162 of 2007 on condition that the appellant/complainant deposits a sum of ₹2,500/- (Rupees Two thousand five hundred only) in the trial court on or before 01/02/2013. Accordingly, the appellant/complainant is directed to appear before the trial court on **01/02/2013** on which date, the learned Magistrate is directed to restore the complaint on file and on his satisfaction that the appellant/complainant deposits a sum of ₹2,500/- (Rupees Two thousand five hundred only) 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 ₹2,500/-, ₹1,000/- each shall be given to accused Nos.1 and 2 and the remaining ₹500/- 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 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 appeal will stand dismissed. In case the appellant/complainant complies with the above direction and co-operates with the inquiry and trial of the case, the learned Magistrate is directed to expedite the proceedings and dispose of the case as expeditiously as possible as the case pertains to the year 2007.

This Criminal Appeal is disposed of as above.

**V.K.MOHANAN, JUDGE**