

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

MONDAY, THE 6TH DAY OF NOVEMBER 2023 / 15TH KARTHIKA, 1945

CRL.A NO. 299 OF 2023

AGAINST THE JUDGMENT DATED 20.02.2018 IN C.C.NO.1269/2015
OF THE JUDICIAL MAGISTRATE OF THE FIRST CLASS (NI ACT
CASES), ERNAKULAM

(Cr1.L.P. 261/2022 OF HIGH COURT OF KERALA)

APPELLANT/COMPLAINANT:

M/S. MEHTA PRIVATE LTD,
WHOLE SALE DEALERS IN TEXTILES AND COMMISSION
AGENTS, BROADWAY, ERNAKULAM, AT PRESENT
REPRESENTED BY THE PRESENT MANAGER AND POWER OF
ATTORNEY HOLDER SRI.K.G.BHASKARAN, S/O GOVINDA
BHASKARAN, PIN - 682016.

BY ADVS.
T.M.CHANDRAN
JOSHI VARGHESE

RESPONDENTS/ACCUSED AND STATE:

1 JOY,
AGED 55 YEARS, S/O. JOSEPH KUZHUPELLIL, PARTNER,
M/S. RAMANIYA VASTRALAYA, A.M.ROAD,
ADMALI.P.O., IDUKKI, PIN - 685561.

2 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031.

BY ADVS.
R1 BY GEORGE SEBASTIAN
R1 BY JOHNSON K.KURIEN
R1 BY LEO SANJO
R1 BY VINU A.V
R2 BY SMT.MAYA M.N., PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING
ON 06.11.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.G. AJITHKUMAR, J.

Crl.Appeal No.299 of 2023

Dated this the 6th day of November, 2023

JUDGMENT

This is an appeal filed under Section 378(4) of the Code of Criminal Procedure, 1973 (Code). The complainant in C.C. No.1269 of 2015 before the Court of Judicial Magistrate of First Class (N.I.Act Cases), Ernakulam, is the appellant.

2. Heard the learned counsel for the appellant, the learned counsel for the 1st respondent and the learned Public Prosecutor.

3. The case arose on a complaint filed by the appellant alleging commission of an offence under Section 138 of the Negotiable Instruments Act, 1881 by the 1st respondent. The impugned judgment, by which the learned Magistrate acquitted the 1st respondent under Section 256(1) of the Code, would show that on 07.02.2018, the case was listed. On that day, the appellant did not appear before the learned Magistrate. Since the matter was listed for recording evidence and the appellant was absent, the learned Magistrate adjourned the matter to

20.02.2018 with a direction to the appellant to appear on that day. On that day also, the appellant did not turn up and that resulted in the impugned judgment.

4. The learned counsel for the appellant would submit that on account of an inadvertent omission, the appellant could not appear before the learned Magistrate on 20.02.2018. The case originally filed before the Chief Judicial Magistrate Court, Ernakulam was subsequently made over to the Judicial Magistrate of First Class Court, Kochi and again to the Court of Judicial Magistrate of First Class (N.I.Act cases), Ernakulam. The appellant did not get timely intimation regarding the pendency of the matter before the said court and that resulted in his failure to appear before that court. The learned counsel would justify the absence of the appellant on the appointed day for the above reasons.

5. Being a case arose on a complaint, it was the obligation of the complainant to appear before the Magistrate and give evidence. The plea regarding lack of intimation regarding scheduling of the case is well probalised in the wake of frequent transfers of the case. Hence, the complainant cannot

be found fault with for his non-appearance before the transferee court. Non-appearance of the appellant before the learned Magistrate on 20.02.2018 in the above circumstances, should not have been a reason for invocation of Section 256(1) of the Code by the Magistrate. I am of the view that the impugned judgment is unsustainable in law and is liable to be set aside.

6. In the result, this appeal is allowed. The judgment dated 20.02.2018 in C.C.No.1269 of 2015 on the file of the Court of Judicial Magistrate of the First Class (N.I.Act cases), Ernakulam is set aside. The learned Magistrate will restore C.C.No.1269 of 2015 on file and proceed with it in accordance with law. The appellant and the 1st respondent shall appear before the learned Magistrate on 01.12.2023.

Sd/-

P.G. AJITHKUMAR, JUDGE