

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 27TH JANUARY 2011 / 7TH MAGHA 1932

CRL.A.No. 1045 of 2009()

AGAINST THE JUDGEMENT IN ST.2266/2006 of JUDL. MAGISTRATE
OF FIRST CLASS COURT-I, PALAKKAD
.....

APPELLANT(S): PETITIONER

A.V.MOHANDAS, S/O.VELUKUTTY
AGED 33 YEARS, AISWARYA, VRINDAVAN COLONY
KODUMBU,PALAKKAD.

BY ADV. SRI.RAJESH SIVARAMANKUTTY

RESPONDENT(S):

1. K.M.NOUSHAD, S/O.LATE MUTHU SAHIB
AGED 37 YEARS, MUNICIPALITY EMPLOYEE
NEW COLONY, CHETTI STREET, PALAKKAD.
2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

PUBLIC PROSECUTOR MR. K.S. SIVAKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 28/01/2011, THE COURT ON 27/01/2011 DELIVERED THE
FOLLOWING:

sou.

K. HEMA, J

Crl.Appeal.No. 1045 OF 2009

Dated 27th January, 2011

J U D G M E N T

This appeal is filed against order of acquittal passed under section 256(1) of Code of Criminal Procedure ('the Code' for short).

2. Appellant is the complainant. He filed a complaint against first respondent before the Magistrate Court alleging offence under Section 138 of Negotiable Instruments Act. The case was taken on file in the year 2006. Several chances were given to the appellant for giving evidence. On 28.2.2009 appellant was absent and there was no representation . Hence accused was acquitted under section 256(1) of the Code.

3. Heard appellant's counsel. There is no representation for first respondent, though notice was served. On going through the appeal memo and on hearing appellant's counsel, it is found that case was posted for evidence on the date on which accused was acquitted. It also appears that accused appeared after steps were initiated under section 82 and 83 of the Code. As per the dictum

laid down in **2010 (4) KLT 697 P.V. Joseph Vs. State of Kerala and another** accused cannot be acquitted on the date to which case was posted for adducing evidence, by invoking section 256(1) of the Code. Hence the order under challenge is unsustainable. In the result, the following order is passed:

- (i) The order under challenge is set aside.
- (ii) The trial court shall take the case on file and dispose of the same in accordance with law.
- (iii) The parties shall appear before the trial court on 01.03.2011.

This appeal is allowed.

sd/-
K. HEMA, JUDGE.

Sou.

// True copy //

P.A. To Judge.