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Crl.A No.914 of 2024

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

THURSDAY, THE 29TH DAY OF AUGUST 2024 / 7TH BHADRA, 1946

CRL.A NO. 914 OF 2024

AGAINST THE ORDER/JUDGMENT DATED IN CrI.L.P. NO.148
OF 2024 OF HIGH COURT OF KERALA ARISING OUT OF THE
ORDER/JUDGMENT DATED IN STC NO.9 OF 2024 OF CHIEF JUDICIAL
MAGISTRATE ,THALASSERY

APPELLANT/COMPLAINANT:

ATHUL SURENDRAN,
AGED 35 YEARS,
S/O SURENDRAN ,DEVADHRUVAM VALLY,
MANGALOTTUMCHAL ROAD,
P.O.KOTTAYAM, PIN - 670643

BY ADV BONNY BENNY

RESPONDENT/RESPONDENT:

VIPIN,
LATE DASAN ,AGE NOT KNOWN ,
PEE VEES WEST PONNIYAM POST,
THALASSERY,KANNUR, PIN - 670641

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
29.08.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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K.BABU, J.

Criminal Appeal No.914 of 2024

Dated this the 29th day of August, 2024

JUDGMENT

The challenge in this appeal is to the order dated 19.04.2024 in STC No.9/2024 passed by the Chief Judicial Magistrate Court, Thalassery. The complainant is the appellant.

2. The complainant filed a complaint alleging offence punishable under Section 138 of the Negotiable Instruments Act against the respondent before the Chief Judicial Magistrate Court, Thalassery.

3. On 19.04.2024, the Chief Judicial Magistrate, Thalassery acquitted the accused under Section 256 (1) Cr.P.C on the ground that the complainant was absent.

4. Notice was served on the party respondent. He did not turn up.

5. Heard the learned counsel for the appellant.

6. The learned counsel for the appellant submitted that the



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non-appearance of the complainant on 19.04.2024 resulted from the fact that his lawyer, who was pregnant at that time, could not represent the matter due to her physical incapacity. It is further submitted that there was no laches on the part of the complainant in the non-appearance on 19.04.2024.

7. Having regard to the ground canvassed by the complainant I am of the view that the failure of the complainant to appear before the Court on 19.04.2024 was not wilful and deliberate. Therefore, the order acquitting the accused due to non-appearance of the complainant on 19.04.2024 is liable to be set aside. In the result, the order dated 19.04.2024 acquitting the accused in STC No.9/2024 stands set aside. The complaint is restored to file. The Trial Court shall proceed with the trial of the matter and dispose of the same in accordance with law. The parties are directed to appear before the Trial Court on 30.09.2024.

The Criminal Appeal is allowed as above.

Sd/-
K.BABU,
JUDGE

KAS



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APPENDIX OF CRL.A 914/2024

PETITIONER ANNEXURES

Annexure A1

THE CERTIFIED COPY OF THE COMPLAINT
FILED BY THE COMPLAINANT U/S 138 AND
142 OF THE NEGOTIABLE INSTRUMENTS ACT
AND U/S 190(1)A OF CR.P.C DATED 11TH
DAY OF JANUARY 2024.