

**A.T.Zaheer Vs. P.Rafeeqe**

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**SooperKanoon Citation :** [sooperkanoon.com/1009449](http://sooperkanoon.com/1009449)

**Court :** Kerala

**Decided On :** Dec-20-2012

**Judge :** Honourable Mr.Justice N.K.Balakrishnan

**Appellant :** A.T.Zaheer

**Respondent :** P.Rafeeqe

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE N.K.BALAKRISHNAN THURSDAY, THE 20TH DAY OF DECEMBER 2012 29TH AGRAHAYANA 193 CRL.A.No. 1549 of 2004 ( )  
----- CC.442/2003 of J.M.F.C.-I, KANNUR -----  
APPELLANT(S)/COMPLAINANT :- ----- A.T. ZAHEER, S/O. SUBAIR, MOTTAMAL HOUSE, NEAR AHAMADIYA MASJID, P.O. KOODALI KANNUR. BY ADV. SRI.A.MOHAMED MUSTAQUE  
RESPONDENT(S)/ACCUSED :- ----- 1. P. RAFEEQUE, SAF MARWA, NEAR SUB REGISTRAR'S OFFICE, MANNA, VALAPATTANAM.

2. THE STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. PUBLIC PROSECUTOR SRI.ROY THOMAS R1 BY ADV. SRI.I.V.PRAMOD THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 20-12-2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: jvt N.K.BALAKRISHNAN, J.

----- Crl.A. No.1549 of 2004 ----- Dated  
this the 20th day of December 2012

## JUDGMENT

The complainant is in appeal. The complaint was filed by him under Sec.138 of N.I.Act. The accused therein was acquitted by the learned Magistrate under Sec.256(1) Cr.P.C. Both sides have been heard.

2. On going through the order, it is seen that the accused was acquitted under Sec.256(1) Cr.P.C. since on the date when the case was called, the complainant was not present nor was he represented. Learned counsel for the complainant submits that complainant was actually present in court on 23.3.2004 and he also entered the court hall when the case was called. But his counsel was not present as he was engaged in another court. Whatever that be, the learned Magistrate was not justified in acquitting the accused under Sec.256(1) Cr.P.C. immediately on finding Crl.A. No.1549 of 2004 -:

2. :- that the complainant was not present, if it is actually true. I find that the order of acquittal is unsustainable and is liable to be set aside. In the result, this Crl.A. is allowed. The order of acquittal passed by the learned Magistrate is set aside. The case is remanded to the trial court for fresh disposal in accordance with law. The parties will appear before the learned Magistrate on 21.1.2013.  
N.K.BALAKRISHNAN, JUDGE. Jvt

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