

Subash K.M. Vs. Padmakumar K. and Another

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Court : Kerala

Decided On : Jan-01-2014

Judge : Honourable Mr.Justice P.Bhavadasan

Appellant : Subash K.M.

Respondent : Padmakumar K. and Another

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.BHAVADASAN WEDNESDAY, THE 11TH DAY OF JANUARY 2014 11TH POUSHA, 1935 CRL.A.No. 1704 of 2013 ()
----- AGAINST THE

ORDER

IN ST4892008 of JUDICIAL FIRST CLASS MAGISTRATE COURT-III, TRIVANDRUM DATED 25-05-2009 CrI.L.P. 1147/2010 of HIGH COURT OF KERALA ----- APPELLANT/COMPLAINANT : ----- SUBASH K.M., S/O. KRISHNAN POTTI, DEVIKA, VALIYAKATTAKKAL, VENJARAMOODU P.O., THIRUVANANTHAPURAM. BY ADVS. SRI.G.P. SHINOD SRI.RAM MOHAN.G. RESPONDENTS : ----- 1. PADMAKUMAR K., S/O. M.KESAVA PILLAI, DEVI NIVAS, MALAYINKEEZHU, THIRUVANANTHAPURAM-PIN 695572 2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. R1 BY ADV. SRI.D.KISHORE R2 BY PUBLIC PROSECUTOR SMT.P. MAYA THIS CRIMINAL APPEAL HAVING

COME UP FOR ADMISSION ON 0101-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: BP P.BHAVADASAN, J.

OF2013-----

	Crl.	Appeal	No.1704
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Dated this the 1st day of January, 2014.

JUDGMENT

Since the 1st respondent is appearing through counsel, it is felt that the appeal can be disposed of on merits.

2. The appellant instituted a complaint under Section 138 of the Negotiable Instruments Act in which the accused entered appearance. When the case was posted for trial, the appellant moved an application on that particular day seeking exemption and it was granted and he was directed to appear on the next posting date. Due to reasons beyond his control, the appellant could not appear before the court concerned on the subsequent date also and therefore, the court invoked the power under Section 256(1) Cr.P.C and acquitted the accused.

3. Learned counsel appearing for the appellant pointed out that true there might have been some latches on the part of the appellant but that was not wilful or deliberate and it was due to reasons beyond his control. It is also pointed out that the Crl. Appeal No.1704/2013 2 appellant was actually laid up and therefore he could not attend the court on the specific date. It is further pointed out that exercise of power under Section 256(1) Cr.P.C for acquitting the accused is uncalled for and the appellant ought to have been given another opportunity to present his case.

4. Learned counsel appearing for the 1st respondent submitted that the court below has shown enough indulgence on the appellant and it was only due to his fault that acquittal was ordered under Section 256(1) Cr.P.C.

5. After having heard the learned counsel for the appellant and the learned counsel appearing for the 1st respondent, it is felt that in the fitness of things and in the interest of justice, the appellant be given an opportunity to substantiate the case as against the 1st respondent.

6. It is true that the court below has shown sufficient indulgence on the appellant and had granted adjournment when he moved an application for exemption. But since it is pointed out that the subsequent absence on the date on which he was directed to be present was not deliberate and wilful and it was CrI. Appeal No.1704/2013 3 due to reasons beyond his control, it is felt that any laches on the part of the appellant can be compensated by way of cost. Therefore, this CrI. Appeal is allowed. The order acquitting the accused under Section 256(1) Cr.P.C is set aside on condition that the appellant pays an amount of Rs.1,500/- (Rupees One thousand five hundred only) to the 1st respondent within a period of two weeks from today. The amount will be paid through the counsel appearing for the 1st respondent in the court and memo filed. Sd/- P.BHAVADASAN JUDGE smp // True Copy// P.A. to Judge.

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