SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Sreeveerabhadra Traders vs Ckm Traders

Sreeveerabhadra Traders vs Ckm Traders

SooperKanoon Citation : sooperkanoon.com/1366446

Court : Kerala

Decided On : Jul-07-2023

Judge : Honourable Mrs. Justice Mary Joseph

Appeal No. : CRL.A/522/2021

Appellant : Sreeveerabhadra Traders

Respondent : Ckm Traders

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH FRIDAY, THE 7TH DAY OF JULY 2023 / 16TH ASHADHA, 1945 CRL.A NO. 522 OF 2021 AGAINST THE JUDGMENT DATED 29.03.2021 IN S.T.NO.114/2019 OF THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-IV, KOLLAM APPELLANT/COMPLAINANT: SREEVEERABHADRA TRADERS, DOOR NO.3084, NEW BLACK, BISHOP JEROME NAGAR, KOLLAM. BY ADVS.SRI.V.PREMCHAND SMT.SURYA MOHAN P. RESPONDENTS/ACCUSED 1 AND 2: 1 CKM TRADERS, RICE MERCHANT, THEVALAKKARA, KOLLAM, PIN - 690 524. 2 SHAHUL HASSAN, POOZHANKULANTHINTE KIZHAKKATHIL, PALAKKAL, THEVALAKKARA, KOLLAM 690 524. 3 THE STATE OF

KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM 682 031. BY ADV. SRI.K.RAKESH R3 BY SMT.SEENA C, PUBLIC PROSECUTOR THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 07th day of July, 2023 This appeal is directed against a judgment passed by Judicial First Class Magistrate Court-IV, Kollam (for short, the court below) on 29.03.2021 in S.T No.114 of 2019.

2. The appellant is the complainant before the court

below and S.T No.114/2019 is a prosecution launched by him for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, the NI Act) on the basis of a complaint filed under Section 142 NI Act. By the impugned judgment, the court below dismissed the complaint under Section 256 of the Code of Criminal Procedure, 1973 (for short Cr.P.C) and acquitted the accused.

3. It is contended by the learned counsel that the

accused entered appeared before the court below on 03.01.2019 and on 03.05.2019, the matter was referred for mediation. The mediation failed and the case was returned to the court. On 29.07.2019, the court on coming to know that the mediation failed, posted the case for evidence to 06.09.2019. On 06.09.2019, the complainant was present

and the court adjourned the case to 17.10.2019. On 17.10.2019, proof affidavit was filed by the complainant alongwith documents to be marked in evidence. On 17.10.2019, the complainant was present but the accused

was absent. In view of the fixation of the marriage of thed

proposed to be relied on by the complainant were directed to be served on the accused.

4. The case was posted further to 29.11.2019. On 29.11.2019, complainant was present and he sought for time for production of two additional documents. Accordingly, the case was adjourned to 18.01.2020 for evidence. On 18.01.2020, documents were produced and the case was

further adjourned to 05.03.2020 for evidence. On 05.03.2020, the complainant was present and the case was adjourned By the court to 27.04.2020 for want of time. From 21.04.2020, the case was adjourned by notification due to Covid-19 pandemic till 29.01.2021. On 29.01.2021, the complainant was represented and the case was posted for evidence to 01.03.2021 for evidence. On 01.03.2021, the complainant was absent and was represented. Thereupon, the court below adjourned the case to 29.03.2021 for evidence. On 29.03.2021, the complainant was absent. He was also not represented and therefore, the court below passed the impugned judgment.

5. The learned counsel for the respondents vehemently opposed the appeal for the reason that enough opportunity had already been granted to the complainant and he failed to avail any of those.

6. It is noticed that most of the postings immediately prior to passing of the judgment was during the period when Covid-19 pandemic was prevailing. Therefore, this Court finds it reasonable to grant one more opportunity to contest his case on merits.

7. For the purpose, appeal stands allowed, the impugned judgment stands set aside. Both parties to the appeal shall make their presence available before the court

below on 26.07.2023. When the parties make their appearance on the day, the court below shall schedule the examination of the complainant to a date convenient to both parties. The court below shall grant only a single opportunity is granted to the complainant for adducing evidence. The accused shall also be

granted with sufficient opportunity to cross examine the complainant. At any rate, the evidence shall be completed and ST No.114/2019 shall be disposed of within a period of two months from the date of first appearance of the parties there. Sd/- MARY JOSEPH JUDGE NAB

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com