

Satheesh P.Chandran Vs. Johny Thomas

Satheesh P.Chandran Vs. Johny Thomas

SooperKanoon Citation : sooperkanoon.com/909054

Court : Kerala

Decided On : Nov-12-2010

Judge : M.L. Joseph Francis, J.

Acts : Negotiable Instruments Act - Section 138; Code of Criminal Procedure (CrPC) (Cr.P.C) - Section 256(1)

Appeal No. : Crl.A. No. 680 of 2004

Appellant : Satheesh P.Chandran

Respondent : Johny Thomas

Advocate for Def. : SRI.VARGHESE C.KURIAKOSE, Adv.

Advocate for Pet/Ap. : SRI.K.K.CHANDRAN PILLAI, Adv.

Judgement :

M.L. JOSEPH FRANCIS, J.

Crl.A. No. 680 of 2004

Dated this the 12th day of November, 2010

1. This appeal is filed by the complainant in C.C. No. 804 of 2000 on the file of the Judicial First Class Magistrate Court - II, Thodupuzha. That was a case filed by the complainant against the first respondent for the offence punishable under Section 138 of the N.I. Act involving a cheque for Rs. 65,000/- On 18.8.2003, the accused

was acquitted under Section 256(1) Cr.P.C. as the complainant was not present in person even after no further time.

2. Heard learned counsel for the appellant and the learned counsel for the first respondent.

3. The learned counsel for the appellant submitted that when the case was posted for evidence on 18.8.2003, complainant could not be present before the court below as he was laid up due to illness and the complainant filed an application for adjournment through his counsel, which was rejected by the learned Magistrate. t

4. Under Section 256 Cr.P.C, three courses are open to the Magistrate where the complainant is absent on the date of hearing; (i) to acquit the accused or (ii) adjourn the case for a future date or (iii) to dispense with the attendance of the complainant and proceed with the case. An order under Section 256 of the Code of Criminal Procedure, which operates as a final order barring a fresh complaint should be passed after proper application of mind and sound exercise of judicial discretion. The order should show the wide discretion that vested in the Court had properly been exercised.

5. Since the complainant filed an application for adjournment through his counsel due to his illness, the acquittal of the accused for non-appearance of the complainant is not proper. Under the above circumstances it would be just and reasonable to set aside the order of acquittal.

6. Accordingly this appeal is allowed. The order in C.C.No. 804 of 2000 on the file of the Judicial First Class Magistrate -II, Thodupuzha acquitting the accused under Section 256(1) Cr.P.C. is set aside. The learned Magistrate is directed to proceed with the trial of the case in accordance with law. Both parties are directed to appear before that Court on 21.12.2010 for further proceedings.

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