

Kerala High Court

M/S.Sharma Marbles House vs Anil Thomas on 6 December, 2006

IN THE HIGH COURT OF KERALA AT ERNAKULAM

CRL A No. 70 of 1999(A)

1. M/S.SHARMA MARBLES HOUSE

... Petitioner

Vs

1. ANIL THOMAS

... Respondent

For Petitioner :SRI.JOMY GEORGE

For Respondent :PUBLIC PROSECUTOR

The Hon'ble MR. Justice J.B.KOSHY

Dated :06/12/2006

O R D E R

J.B. KOSHY, J.

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CRL.APPEAL No. 70 of 1999

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Dated this the 6th day of December, 2006 Judgment Appellant filed a complaint under section 138 of the Negotiable Instruments Act alleging that cheque issued by the first respondent to the appellant was dishonoured for insufficiency of funds. According to the appellant, he has fulfilled the statutory formalities.

Records show that there were several postings and complainant was present, but, on one day, complainant applied for time. That was rejected and accused was acquitted under section 256 (1) of the Code of Criminal Procedure. On that day, it is stated that accused was also absent. When

accused was absent, presence of the complainant was not absolutely necessary. It is settled law that even though magistrate's court has power to acquit the accused for absence of complainant under section 256 Cr.P.C., it should not be done mechanically.

Here, in this case, accused was absent on the posting date. In the above circumstances, accused should not have been acquitted for the absence of the complainant.

Notice issued by this Court was not served. I am not expressing any opinion regarding the merits of the matter. There was appearance for the accused before the court below.

In the above circumstances, the impugned order is set aside as passed without application of mind and the matter is remanded for fresh consideration. The magistrate should continue the proceedings and post the case on 12.1.2007. Appellant should be present on that day. Magistrate should also give intimation of the posting of the case to the advocate appearing for the accused.

Appeal is allowed by way of remand.

J.B.KOSHY JUDGE vaa J.B. KOSHY, J.

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Judgment Dated:6th December, 2006