

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN**

**THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937**

**CRL.A.No. 461 of 2004**  
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**C.C.NO.63/2003 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II,  
SULTHAN BATHERY**  
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**APPELLANT(S)/ACCUSED:**  
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**N.SWARNAMOHAN,  
SANTHINAGAR HOUSING COLONY,  
SULTHAN BATHERY.**

**BY ADV. SRI.P.N.PURUSHOTHAMA KAIMAL**

**RESPONDENT(S)/COMPLAINANT AND STATE :**  
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- 1. K.I.JOSE,  
KARUNA HOSPITAL, SULTHAN BATHERY.**
- 2. STATE OF KERALA REPRESENTED BY DIRECTOR  
OF PUBLIC PROSECUTION, HIGH COURT OF KERALA,  
ERNAKULAM.**

**R1 BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)  
R2 BY PUBLIC PROSECUTOR SEENA RAMAKRISHNAN**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17-09-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

K.RAMAKRISHNAN, J.

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Crl. Appeal No.461 OF 2004

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Dated this the 17<sup>th</sup> day of September, 2015

JUDGMENT

The complainant in C.C.No.63/2003 on the file of the Judicial First Class Magistrate Court, Sulthanbathery is the appellant herein. The case was taken as file on the basis of a private complaint filed by the appellant against the accused under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the Act)

2. The case of the complainant in the complaint was that on 10.4.2000 the accused purchased 225.200 kilograms of pepper for a total consideration of Rs.56,300/- and in discharge of that liability he had issued Ext.P1 cheque with date 10.5.2000. Thereafter the accused approached the complainant not to present the cheque and agreed to pay the amount. He did not pay the amount. The date in the cheque was altered as 31.12.2000 and counter signed by the accused and he presented the cheque and the same was dishonoured for the reason funds insufficient

evidenced by Ext.P2 dishonour memo and that was intimated to him by Ext.P3 notice intimating dishonour and demanding the payment of amount evidenced by Ext. P4 postal receipt and the same was received by the accused evidenced by Ext.P5 postal acknowledgment and he had not paid the amount so he had committed offence punishable under Section 138 of the Act.

3. When the accused appeared before the court below, the particulars of the offence were read over and explained to him and he pleaded not guilty. In order to prove the case of the complainant, the complainant himself was examined as PW1 and Ext.P1 to P6 were marked on his side. After closure of the complainant's evidence, the accused was questioned under Section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the complainant's evidence. He had further stated that no amount is due from him and a blank signed cheque given as security, after discharge of the amount, was misused and the present complaint was filed. The court below after consideration of

the evidence come to the conclusion that there is material alteration and there is only one single counter signature of the correction made and as such the instrument has become invalid and no offence under Section 138 of the Act is attracted and acquitted the accused. Aggrieved by the same, the above appeal has been preferred by the appellant with leave petition as criminal L.P. No.204/2004 and leave was granted and the appeal was admitted to file.

4. When the appeal came up for hearing, on an earlier occasion, it was reported that counsel appearing for the appellant is no more. So this court has issued notice to the complainant directly and that notice was also returned with endorsement "addressee deceased". In spite of that legal representatives did not come on record to prosecute the appeal. Section 256 of the Code of Criminal Procedure deals with the situation of non appearance or the death of the complainant and it says that in such cases the accused will have to be acquitted. In this case the court below had acquitted the accused on the basis of the evidence. I have gone through the judgment and records and finding of the

court below on this aspect cannot be said to be perverse so as to interfere as well. So under the circumstances, this court feels that the appeal will have to be dismissed confirming the order of acquittal passed by the court below. So the appeal is dismissed and order of acquittal passed by the court below against the 1<sup>st</sup> respondent is hereby confirmed.

Office is directed to communicate to this order to the concerned court immediately.

Sd/-  
K.RAMAKRISHNAN, JUDGE

SKV