IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

CRL.A.No. 420 of 2008 ( )

AGAINST THE ORDER/JUDGMENT IN Crl.L.P. 1137/2007 OF HIGH COURT OF KERALA DATED 29-11-2007

AGAINST THE JUDGMENT IN CC 289/2000 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I,HOSDRUG DATED 18-04-2007

APPELLANT/COMPLAINANT:

M.A.MOHAMMED, AGED 74 YEARS,
S/O.AHAMMAD/MUNDOL HOUSE, PADNAKKAD, KANHANGAD VILLAGE
P.O.PADNAKKAD, KASARAGOD DIST.

BY ADVS.SRI.PAUL JACOB
SRI.M.A.ANZAR
SRI.PEARL K.DAVIS
SRI.I.K.RAJU

RESPONDENTS/ACCUSED:
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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. RATHNAKARAN, AGED 34 YEARS,
S/O.NARAYANAN NAIR, THONNIKADAVU HOUSE
BENDADUKA VILLAGE, P.O.KUNDANKUZHI (VIA), CHENGALA
KASARAGODE (DIST).

R1 BY PUBLIC PROSECUTOR SMT. REMA R.
R2 BY ADV. SRI.T.K.VIPINDAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SHG/

K. ABRAHAM MATHEW, J.

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Crl.A. No.420 of 2008

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Dated this the 24th day of March, 2015

J U D G M E N T

This appeal has been filed against an order of acquittal passed by the learned Judicial First Class Magistrate-I, Hosdurg in C.C.No.289/2000. On the allegation that the second respondent borrowed from the appellant Rs.28,500/- and the cheque issued by him to discharge the liability was returned dishonoured by the bank for want of sufficient fund in his account and in spite of demand by notice he failed to pay the amount and he thus committed the offence under Section 138 N.I. Act the appellant filed the complaint. After the appellant's evidence was closed and the second respondent was examined under Section 313 Cr.P.C. the latter was examined as DW1. Then the appellant filed an application to recall himself to be examined again which was rejected by the learned Magistrate. In Crl.R.P.No.3281/2004 this court set aside the order and allowed the appellant to examine himself again. The purpose was to adduce evidence to prove that the second respondent committed the offence under Section 420 IPC. The reason was that the evidence disclosed that the cheque relied on by the appellant was not drawn on the account maintained by the second respondent. Thereafter a charge was framed for the offences under Sections 138 N.I. Act and 420 IPC and PW1 was examined again and evidence was closed. Learned Magistrate acquitted the second respondent.

2. Heard the learned counsel on either side.

3. Ext.P1 is the cheque relied on by the appellant. The account number is shown as 5232. Ext.D2 document issued by the bank concerned proves that the holder of the account number 5232 is someone other than the second respondent. There cannot be any doubt that the facts of the case do not attract Section 138 N.I. Act.

4. Now the question is whether Section 420 IPC is attracted. In the pleadings there is no allegation that the second respondent committed the offence under Section

420 I.P.C. The facts to attract Section 420 do not find a place in the pleadings. That apart, even if it is assumed that all the allegations of the appellant are true, the cheque was issued for an antecedent debt. There was no delivery of any property at the time of its delivery. So the ingredients of Section 420 IPC are not attracted.

5. Coming to the merits of the case, neither the date on which, nor the month nor the year in which the appellant lent the amount to the second respondent is mentioned in the complaint or in his examination-in-chief. In the cross-examination he disclosed that the amount was lent in the first week of October 1999 and Ext.P1 cheque was issued on 6.11.1999. Why did the appellant suppress these facts in his complaint and examination-in-chief? It is clear that it was with malicious intention he did so. He wanted to deny the second respondent an opportunity to effectively meet his case. The appellant is not an honest litigant.

6. In the examination-in-chief of the appellant (PW1) he disclosed that it is the accused who signed in Ext.P1

cheque. But he did not depose how he came to know about it. In the cross-examination he said that the second respondent put his signature in his presence at his residence. The only other person who allegedly was present at the time of issuance of the cheque was the appellant's son, who has not been examined in the case. But after the appellant (PW1) was recalled, he developed a new case and deposed that some others also were present at the time of issuance of the cheque. They are PW2 and PW3. These two witnesses deposed that they saw the second respondent filling up the cheque and signing in it. As mentioned earlier, even the appellant (PW1) has no case that the second respondent filled up the cheque in his presence. PW2 is an employee and PW3 a partner of the appellant. It is a wonder that PW2 could remember the date of issuance of the cheque. I have no doubt that PW2 and PW3 are hired witnesses.

7. In Ext.P1 cheque the name of the payee alone is in one ink the other entries are in a different ink. It shows that

the cheque was filled up and signed at different times and not simultaneously.

8. The definite case of the second respondent is that he had no transaction with the appellant and Ext.P1 is not a cheque issued by him. I have no hesitation to hold that the appellant's case that Ext.P1 is a cheque issued by the second respondent is false. The learned Magistrate rightly passed the impugned order of acquittal. This appeal is devoid of any merit.

In the result, this appeal is dismissed.

Sd/-
K. ABRAHAM MATHEW
JUDGE

//True copy//

P.A. TO JUDGE

shg/