IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

CRL.A.No. 24 of 2015 ()

AGAINST THE JUDGMENT IN CC 289/2011 of THE JUDICIAL FIRST CLASS MAGISTRATE COURT- I, CHERTHALA DATED 12-08-2013

AGAINST THE ORDER IN Crl.L.P. 422/2014 of HIGH COURT OF KERALA DATED 18-12-2014

APPELLANT/COMPLAINANT:

M/S.MUTHOOT LEASING AND FINANCE LIMITED NOW MUTHOOT VEHICLE AND ASSET FINANCE LIMITED
HEAD OFFICE AT MUTHOOT CHAMBER 2ND FLOOR
OPP. SARITHA THEATRE COMPLEX, BANERJI ROAD, ERNAKULAM
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER
BABY SUJATHA.

BY ADVS.SRI.P.JAYABAL MENON
SRI.JAGAN ABRAHAM M.GEORGE

RESPONDENT(S)/ACCUSED AND STATE:
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1. SUDHI N
S/O. NADESHAN, VETTUNKADADAVIL, THIRUNELLOOR.P.O.
CHERTHALA-688541.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, COCHIN-682031.

R2 BY SRI GITHESH R., PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JV

K. ABRAHAM MATHEW, J.

Crl.Appeal No.24 of 2015

Dated this the 18th day of March, 2015

JUDGMENT

The appellant company was the complainant and the 1st respondent, the accused in CC No.289/2011 on the file of the Judicial First Class Magistrate Court-I, Cherthala. The allegation was that under a hire purchase agreement entered into between the appellant and the first respondent the latter purchased a vehicle availing himself of a loan from the appellant company and to discharge the liability he “executed and issued” a cheque bearing date 10.01.2011 “after putting his signature on the cheque” and the cheque 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 thus he committed the offence under Section 138 of Negotiable Instruments Act. The learned Magistrate came to the conclusion that the evidence proves that the cheque was issued more than 3 years before the alleged date of execution and the appellant's case is not true and accordingly he acquitted the first respondent of the offence.

2. Heard the learned counsel for the appellant.

3. In the complaint, neither the date of the loan nor the date on which the cheque was issued is mentioned. This is relevant on the facts of the case.

4. In his examination in chief PW1, who was examined by the appellant to prove its case, repeated the statement in the complaint that the 1st respondent "executed and issued" Ext.P1 cheque "after putting his signature on the cheque". There is no whisper about the witness seeing the first respondent writing or signing the cheque. He does not claim to have seen execution of the cheque. Still in the cross-examination, he said that the cheque was filled up by a friend of the 1st respondent. The reason is obvious. The amount in Ext.P1 cheque is entered in an ink different from the one in which the other entries are made. Even this testimony of PW1 is false. The name and signature seen in Ext.P1 are in one ink. It is very patent that the payee's name was written by the person who signed it and that is the appellant. The evidence of PW1 that the entries in the cheque were made by a friend of the first respondent is false. So it stands proved that when the cheque was delivered it contained

only the signature of the 1st respondent and the payee's name. Evidence of PW1 does not prove execution of the cheque.

5. Appellant company's name is Muthoot Leasing and Finance Limited. The payee's name in Ext.P1 cheque is MLFL, which stands for 'Muthoot Leasing and Finance Limited'. Neither in the complaint nor in the examination in chief of PW1 there is any explanation for this difference in names. Ext.P11 proves that the appellant company's name was Muthoot Leasing and Finance Limited till 20.03.2007. In 2007 that company ceased to be in existence. If the appellant's version is true, Ext.P1 was issued in the name of a company which ceased to be in existence three years ago. The explanation given by PW1 in the cross examination is that cheque in favour of MLFL also could be encashed. It is not known on what basis he made the statement. The question is not whether the cheque could be encashed. The fact that cheque was issued in favour of a company which ceased to be in existence three years ago will go a long way to proving that the cheque was not issued on the date mentioned in the evidence of PW1. It is clear that the cheque was issued when the company's name was MLFL.

The facts discussed above compel me to take the view that the order of acquittal passed by the learned Magistrate is fully justified. There is no ground to interfere with the finding. In the result, this appeal is dismissed.

SD/-
K. ABRAHAM MATHEW,
JUDGE

JV