

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

CRL.A.No. 41 of 2015

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AGAINST THE ORDER IN Cr.L.P. 409/2014 OF HIGH COURT OF KERALA
DATED 16-12-2014**

**AGAINST THE JUDGMENT IN CC 85/2014 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT - II, PERUMBAVOOR DATED 10-10-2014**

APPELLANT/PETITIONER/COMPLAINANT:

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E.H. SULFIKAR AGED 35 YEARS
ETTIYATTARA VEETIL, IDAVVOOR KARA
KOOVAPPADY VILLAGE.**

**BY ADVS.SRI.ANIL K.MOHAMMED
SRI.V.S.MANSOOR**

RESPONDENTS/RESPONDENTS/ACCUSED AND STATE:

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1. JAMES PARACKA, AGED 38 YEARS
PARACKAL HOUSE, THIRUMUDIKKUNNU.P.O., KORATTY-680308.**

**2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA.**

R2 BY PUBLIC PROSECUTOR SMT. REMA R.

**THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 11-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

K. ABRAHAM MATHEW, J.

Crl.A. No.41 of 2015

Dated this the 11th day of February, 2015

J U D G M E N T

The appellant was the complainant in C.C.85/2014 on the file of the Judicial First Class Magistrate Court-II, Perumbavoor. His case was that on 23.3.2006 the first respondent borrowed from him Rs.1,50,000/- and to discharge the liability he issued a cheque bearing date 23.6.2011 and the cheque was dishonoured by the bank for want of sufficient fund in the account and in spite of demand by notice he failed to pay the amount and thus he committed the offence under Section 138 of N.I. Act. The learned Magistrate found that the allegation against him has not been proved and accordingly, he acquitted him of the offence.

2. Heard the learned counsel for the appellant.

3. The allegation in the complaint is that the appellant advanced a loan of Rs.1,50,000/- to the first respondent on 23.3.2006. In the affidavit filed in lieu of the

examination-in-chief the date of transaction is shown 23.6.2006. The appellant, who was examined as PW1, was given an opportunity to explain the inconsistent versions in the cross- examination. Thereupon, he deposed that the date of transaction is 23.6.2006. When he was asked whether he had advanced any loan on 23.3.2006 he pretended that he did not remember it.

4. The contention of the first respondent was that he had no acquaintance with the appellant and he did not borrow any amount from the appellant.

5. The appellant (PW1) deposed that the first respondent married one of the two sisters of one Ginesh Poulouse, who is a friend of him. This has been proved false by the evidence of PW2 who says that the wife of the first respondent is the sister of one Jayesh. This indicates that the case of the appellant that he had acquaintance with the first respondent is not true. The evidence of PW1 that he never went to the house of the first respondent demanding money has been proved false by the evidence of his own

witness, PW2, whose version is that he along with appellant went to the house of the first respondent about eight months after the alleged transaction.

6. The learned Magistrate also has come to the conclusion that at the relevant time the first respondent was an ordinary resident of Chennai. Ext.D1 ration card produced by the first respondent proves that he was a resident of Tamil Nadu during the relevant period. Ext.D2 domestic gas customer card issued to him on 28.5.2002 from Chennai. Thereafter, he shifted his residence to Khanna Nagar on 5.7.2007. There is other evidence also to prove that he was a resident of Chennai during the relevant period. In fact, in the cross-examination PW1 admitted that the first respondent was a resident of Chennai. But he pretended that he did not know the period during which the first respondent was residing at Chennai.

7. The above facts definitely compel the court to believe that the appellant's case that on 23.3.2006 he advanced a loan of Rs.1,50,000/- to the first respondent on

23.3.2006 and the latter issued Ext.P1 cheque to discharge the liability is not true. The learned Magistrate was fully justified in passing the order of acquittal. There is no merit in the appeal.

In the result, this Criminal Appeal is dismissed.

Sd/-
K. ABRAHAM MATHEW
JUDGE

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P.A. TO JUDGE

shg/