IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

CRL.A.No. 133 of 2015 ()

AGAINST THE JUDGMENT IN CRL.A. 299/2011 OF ADDITIONAL SESSIONS COURT (ADHOC)-II, KOLLAM DATED 18-05-2013

AGAINST THE JUDGMENT IN CC 1249/2008 OF JUDICIAL MAGISTRATE OF THE FIRST CLASS-I, KOLLAM DATED 23-07-2011

AGAINST THE ORDER IN Crl.L.P. 370/2014 OF HIGH COURT OF KERALA DATED 09-01-2015

APPELLANTS/RESPONDENT/COMPLAINANT:
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1. **KUMARASWAMI CHETTIYAR (DIED)**
   S/O.SIVASANKARAN, SEENA SADANAM, KOVILMUKKU
   PERUMBUZHA P.O KOLLAM

2. **VASANTHAKUMARI**
   W/O.LATE KUMARASWAMI CHETTIYAR, SEENA SADANAM
   KOVILMUKKU, PERUMBUZHA P.O, KOLLAM 691601

   BY ADVS.SRI.BINU GEORGE
   SMT.HEMALATHA

RESPONDENTS/ACCUSED & STATE:
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1. **SETHUMADHAVAN PILLAI K.G., AGED 75 YEARS**
   S/O.GOPALA PILLAI, AMBADI, CHONAMCHIRA WARD NO. 10
   PANAYAM VILLAGE, PANAYAM P.O, KOLLAM

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

   R2 BY PUBLIC PROSECUTOR SMT. REMA R.

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 02-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

shg/

K. ABRAHAM MATHEW, J.

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Crl.A.No.133 of 2015

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Dated this the 2nd day of March, 2015

<u>J U D G M E N T</u>

The second appellant is the wife of one Kumaraswami Chettiyar who is shown as the first appellant though he died before filing of the appeal. Kumaraswami Chettiyar filed a complaint alleging that on 12.12.2007 the first respondent borrowed from him Rs.1,50,000/- and issued a cheque bearing date 17.9.2008 towards repayment of the amount and it was returned dishonoured 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 N.I. Act. The learned Magistrate found the first respondent guilty of the offence and imposed a sentence of imprisonment. He also directed the first respondent to repay Rs.1,50,000/- as compensation to Kumaraswami Chettiyar. In the appeal the learned Sessions Judge held that the complainant's case is not at all believable and accordingly, he acquitted the 1st respondent. This order of acquittal is challenged in this appeal.

2. The learned counsel for the appellant submits that the second appellant had filed an application before the Sessions Court to implead her as an additional respondent and it was not considered by the learned Sessions Judge. It is of no significance now as this appeal is filed attacking the impugned judgment on merits and no prejudice has been caused to the second appellant. Moreover, the impugned judgment shows that her counsel was heard before it was passed. The learned Sessions Judge may close the petition if it is still pending.

3. Ext.P1 is the cheque relied on by the appellant. He (PW1) deposed that the first respondent executed the cheque before him. But in the cross-examination he was compelled to admit that the entries in the cheque and the signature in it are in different inks. There is no explanation for this. It makes his case doubtful. It makes probable the defence version that the complainant unauthorizedly made entries in the signed blank cheque he had issued as a

security for a loan transaction of Rs.15,000/- which took place in 2006.

4. The complainant was a retired employee. He had no regular income to advance a loan of Rs.1,50,000/-. He said that he had with him the gratuity, the amount obtained on commutation of pension and his small savings. The implication is that it was this amount he advanced as loan to the first respondent. But the next moment he admitted that he had entrusted the amount to his son-in-law who was doing some business. Even if this is assumed to be true, there is nothing in his evidence to prove that he got back the amount so that he could pay it to the first respondent. It is very difficult to believe that he had Rs.1,50,000/- with him to lend it to the first respondent.

5. As mentioned earlier, the complainant was a retired employee. He was not an income tax payee. There was no agreement for payment of interest though the amount involved is huge so far as he was concerned. The borrowing was on 12.12.2007. The date of cheque is

17.9.2008. It is very difficult to believe that the complainant advanced a loan of Rs.1,50,000/- to the first respondent who was 75 years old free of interest for about one year. This suspicious circumstance also lends assurance to the conclusion that the complainant's case is not true. The learned Sessions Judge is fully justified in passing the impugned order of acquittal. No interference is called for.

In the result, this appeal is dismissed.

Sd/-

K. ABRAHAM MATHEW
JUDGE

//True copy//

P.A. TO JUDGE

shg/