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. 140 of 2015 ()

AGAINST THE JUDGMENT IN STC 2065/2012 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, KANNUR DATED 1.4.2014

AGAINST THE ORDER IN Crl.L.P. 25/2015 OF HIGH COURT OF KERALA DATED 29.1.2015

APPELLANT (COMPLAINANT BEFORE THE TRIAL COURT):

MOHANAN, AGED 43 YEARS
S/O. KANNAN, KANJARANKANDY HOUSE, CHALAD
KANNUR DISTRICT, PIN 670 014.

BY ADV. SRI.P.K.RAVISANKAR

RESPONDENTS/(ACCUSED AND STATE):
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1. PUSHPA MOHAN
W/O. MOHAN DEVADAS, "EBENZER", THAVAKKARA
KANNUR 670 002.

2. STATE OF KERALA
REPRESENTED BY 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.140 of 2015

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Dated this the 2nd day of March, 2015

JUDGMENT

This appeal arises from the order of acquittal passed by the learned Judicial First Class Magistrate Court-I, Kannur. In the complaint filed by the appellant it was alleged that in April 2010 the first respondent borrowed from him Rs.1,25,000/- and to repay the amount on 28.2.2011 she issued a cheque bearing date 28.4.2011 for Rs.1,25,000/- and it was returned dishonoured for want of sufficient fund in the account. It is further alleged that on receiving notice from the appellant she requested not to proceed against her and issued another cheque for Rs.1,50,000/- bearing date 7.10.2011; this amount included interest and cost which was fixed at Rs.25,000/-. This also was returned dishonoured for want of sufficient fund in the account. In spite of demand by notice she failed to pay the amount. Thus she committed the offence under Section 138 N.I. Act, the appellant alleged. The learned Magistrate found that the appellant failed to prove execution of the cheque and the first respondent is entitled to acquittal.

2. Heard the learned counsel for the appellant.

3. Ext.P3 is the cheque relied on by the appellant. Neither in the complaint, nor in the examination-in-chief the appellant, who was examined as PW1, has a case that he saw the first respondent executing the cheque. In the cross-examination he disclosed that he only saw her putting her signature in the cheque. There is no explanation on his part how the first respondent happened to put her signature alone in the cheque in his presence. It is quite unbelievable that the first respondent took a written up cheque to the appellant and signed it in his presence. The learned Magistrate rightly came to the conclusion that the appellant failed to prove execution of the cheque.

4. Going by the version of the appellant he advanced a loan of Rs.1,25,000/- in April 2010. The promise was to repay it within one year. Admittedly, the appellant is not a wealthy man. It is quite unnatural that he would lend

Rs.1,25,000/- free of interest for one year and that also without taking even a scrap of paper to evidence the transaction.

5. Questions were put in the cross-examination of PW1 about his capacity to pay the amount. Ext.D1 pass book shows that he did not have the capacity to pay Rs.1,25,000/- as loan. His testimony is that he obtained from a chitty Rs.47,000/- and from a pigmy account he had maintained with a bank Rs.60,000/-. But to prove it he did not produce any document. As mentioned earlier, his bank passbook shows that he did not have money in his account. Except his interested testimony that he obtained money from chitty and pigmy account there is nothing to believe that he had the money to advance Rs.1,25,000/- as loan.

6. Thus the appellant failed to prove execution of the cheque and that he had source of income to pay Rs.1,25,000/- as loan to the first respondent. There is also no evidence to prove that the first respondent had the capacity to repay the amount. It has come out in his cross-

examination that her son is heavily indebted to many people and he is now absconding. Her version that Ext.P3 was one of the two signed blank cheques her son had given him as security for a loan he had taken is probable. I do not find any illegality in the order of acquittal passed by the learned Magistrate.

In the result, this appeal is dismissed.

Sd/-
K. ABRAHAM MATHEW
JUDGE

//True copy//

P.A. TO JUDGE

shg/