IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

CRL.A.No. 149 of 2015 () IN Crl.L.P.26/2015

AGAINST THE ORDER/JUDGMENT IN CC 1556/2010 OF JUDICIAL FIRST CLASS MAGISTRATE VI, ERNAKULAM DATED 7.11.2014

AGAINST THE ORDER IN Crl.L.P. 26/2015 OF HIGH COURT OF KERALA DATED 22-01-2015

APPELLANT/COMPLAINANT:

T.J. JOY
S/O. LATE JOHN, THEROTH HOUSE, MUNAMBAM
PALLIPPORT, PIN 683515.

BY ADVS.SRI.S.P.ARAVINDAKSHAN PILLAY
SRI.S.A.ANAND

RESPONDENTS/ACCUSED & STATE:
----

1. O.P. JOY
SON OF LATE PAILY, OLATTUPURATH, MUNAMBAM
PALLIPORT, PIN 683515

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 25-02-2015, ALONG WITH CRL.A.150/2015,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

shg/

K. ABRAHAM MATHEW, J.

- -

Crl.A.Nos.149 & 150 of 2015

- -

Dated this the 25th day of February, 2015

J U D G M E N T

The first respondent has a brother by name Paul whose wife is Binu Paul. She had a fishing vessel. The vessel was in the possession and management of Paul. The appellant was given a share in the business for which he paid Rs.3 lakhs to Binu Paul. Paul did not pay him any share in the profit. On 29.3.2000 the appellant paid Rs.3 lakhs more and purchased '½ right in the vessel', which is evidenced by an agreement. But the appellant was not paid his share in the profit. Later the vessel and the purseen net were agreed to be given to the appellant which is evidenced by an agreement dated 8.8.2001. “Since the boat owners did not comply with any of the terms of the settlement, the complainant (appellant) lodged a complaint before the police authorities which also failed during 1999”. The first respondent agreed to pay the appellant Rs.12.5 lakhs in full and final settlement of his claim against Binu Paul. He issued a cheque dated 6.12.2005 for Rs.6.5 lakhs and another cheque dated 20.12.2005 for Rs.6 lakhs. The cheques were presented before the bank on 6.2.2006. They were returned dishonoured for want of sufficient fund in the account. To the notice issued by the appellant the first respondent sent reply notice raising false contentions. He did not pay the amounts covered by the cheques. Thus he committed the offence under Section 138 of N.I. Act. This is the sum and substance of the allegations of the appellant in the two complaints filed by him on the basis of the above two cheques. The two cases were tried jointly. By the impugned judgment the trial court found that the appellant failed to prove execution of the cheque and accordingly, it acquitted the appellant in both cases. The order of acquittal is challenged in these appeals.

2. The appellant was examined as PW1. No other witness was examined on his part except a bank officer. The defence version is that Binu Paul was liable to pay Rs.3 lakhs to the appellant; on a complaint filed by the appellant Deputy Superintendent of Police concerned

summoned the first respondent and all his brothers including Paul to his office and forced the appellant to handover two signed blank cheques and those are the cheques relied on by the appellant.

3. Proof regarding execution of the cheques, which were marked as Ext.P7 and P7(a), may be considered. The appellant who was examined as PW1 has no case that he saw the appellant executing the cheques. In cross-examination he said that the first respondent brought written up cheques. Still he did not say that he saw the first respondent signing the cheques. But for the admission of the first respondent that the cheques bear his signatures, there would have been no evidence to prove even the signatures in Exts.P7 and P7 (a).

4. The first respondent was examined as DW1 and his brother Thomas as DW2. Both of them deposed that on 6.11.2005 a Police Constable came to their houses and asked them to appear before the Deputy Superintendent of Police concerned. When DW1 and DW2 reached the office of

the Dy.S.P. their brother Paul and the appellant were present there. The Dy.S.P. told DW1 and DW2 that the appellant had filed a complaint stating that Paul was liable to pay him Rs.8 lakhs. Dy.S.P. asked them not to leave his office until the matter was settled. Dy.S.P. went out. After he came back DW1 and DW2 were threatened and they were asked to issue signed blank cheques. They were told that unless the cheques were issued, they will not be allowed to go back to their homes. All the brothers consulted together, pursuant to which, the first respondent went to his house and came back with two cheque leaves. At the instance of Dy.S.P. the first respondent put his signature in both cheque leaves and handed them over to the Dy.S.P., both DW1 and DW2 deposed.

5. It is an admitted fact that at the instance of the appellant Dy.S.P. intervened in the matter though it was a civil dispute. The appellant's version is that one advocate came along with the first respondent and his brothers and told the Dy.S.P. that it was a civil dispute and the Dy.S.P.

then let the brothers go.

6. I do not find any inconsistency or discrepancy in the evidence of DW1 and DW2. In the cross-examination nothing could be brought out to impeach their credibility. The learned counsel for the appellant submits that the evidence of DW1 is at variance with that of DW2. DW2 deposed that when the first respondent gave a signed blank cheque to the Dy.S.P., the latter insisted on getting one more signed blank cheque and that was how two cheques were given to the Dy.S.P. He also added that it was with the pen given by the Dy.S.P. the second cheque was signed by the appellant. This is not inconsistent with the evidence given by DW1. These are some details which do not find a place in the evidence of DW1. That will not make the evidence of DW1 or DW2 unbelievable.

7. There is no dispute that even the two signatures in Exts.P7 and P7(a) cheques are in different inks, for which there is no explanation on the part of the appellant. But DW2 has given an explanation for it. As mentioned earlier,

the explanation is that the second cheque was signed at the instance of the Dy.S.P. with the pen given by him. I find the evidence of DW2 acceptable. The evidence of DW1 and DW2 unerringly proves that Exts.P7 and P7(a) are signed blank cheques handed over to Dy.S.P. under threat. Dy.S.P. had no business to interfere in civil disputes. He was not even the S.H.O. concerned. The very fact that still the appellant approached him proves that the appellant could influence the police officer to compel the 1st respondent to give signed blank cheques.

8. Even the year of payment of Rs.3 lakhs allegedly made by the appellant initially to Binu Paul is not disclosed in the complaint. The date or place of issuance of Ext.P7 and P7(a) cheques also do not find a place in the complaint. These facts make the appellant's case doubtful. Ext.P7 cheque bears the date 6.12.2005 and Ext.P7 (a) 20.12.2005. The total amount is Rs.12.5 lakhs. The cheques were presented only on 6.2.2006. Ordinarily, he would not have delayed presentation of the cheques. This also is a

suspicious circumstance.

9. In the complaint it is stated that as agreed by Binu Paul she did not pay the appellant his share in the profits though she had received Rs.3 lakhs from him. Still he would like the court to believe that he paid Rs.3 more lakhs to her. This also is very unnatural. In his evidence the appellant (PW1) made many improvements upon his version in the complaint. The specific case in the complaint is that he was made a partner in the business of Binu Paul on his paying Rs.3 lakhs. But his statements in the examination-in-chief indicate that there was only a promise that he would be made a partner. If that is true, he was not entitled to get any share in the profit of the business of Binu Paul. PW1 had also a case that later there was an agreement that he would be given one-half share in the business of Binu Paul. But there is no evidence to prove that the amount invested by Binu Paul in the business was ascertained. His testimony in the box that an agreement was executed on 21.10.1999 is a new case developed in the witness box.

10. Admittedly, the first respondent did not owe any money to the appellant. It is impossible to believe that voluntarily he would make himself liable to pay the huge amount of Rs.12,50,000/- to the appellant.

11. All the facts mentioned above definitely indicate that the appellant's case is false. As observed by the Supreme Court in **M.S. Narayana Menon v. State of Kerala [AIR 2006 S.C. 3366]** to rebut the presumption, if any, under Section 139 of N.I. Act the accused can rely on the improbabilities brought out in the cross-examination of the complainant's case. I have no doubt that the weight of evidence available in the case is such that it is difficult to believe the appellant's case as true. The learned Magistrate rightly came to the conclusion that the first respondent is entitled to acquittal. There is no merit in the appeal.

In the result, these appeals are dismissed.

Sd/-
K. ABRAHAM MATHEW
JUDGE
//True copy//
P.A. TO JUDGE

shg/