IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

CRL.A.No. 180 of 2015 () IN Crl.L.P.56/2015

AGAINST THE JUDGMENT IN CC 529/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I,KOCHI DATED 30-12-2014

AGAINST THE ORDER IN Crl.L.P. 56/2015 OF HIGH COURT OF KERALA DATED 09-02-2015

APPELLANT/COMPLAINANT:

FRANCIS ANTONY K.G, AGED 59 YEARS
S/O.GEORGE, KARUKAPARAMBIL HOUSE, CHILAVANOOR
KADAVANTHARA.P.O., KOCHI-682 020.

BY ADV. SRI.M.A.ASIF

RESPONDENTS/ACCUSED & STATE:
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1. SUMA JOHN
W/O.JOHN MATHEW, KYNATTUMPILLY HOUSE, ELENJERIL
CHILAVANOOR, KADAVANTHARA.P.O., KOCHI-682 020.

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

R2 BY PUBLIC PROSECUTOR SMT. R. REMA

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 13-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

shg/

K. ABRAHAM MATHEW, J.

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Crl.A. No.180 of 2015

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Dated this the 13th day of March, 2015

J U D G M E N T

The appellant was the complainant and the first respondent the accused in C.C.No.529/2013 on the file of the learned Judicial First Class Magistrate Court-I, Kochi. In the complaint it was alleged that on 30.01.2011 the first respondent borrowed from the appellant Rs.20 lakhs and later to discharge the liability she issued a cheque bearing date 27.8.2012 and it was returned dishonoured by the bank for want of sufficient fund in her account and despite demand by notice she failed to pay the amount and thus she committed the offence under Section 138 N.I. Act. The trial court came to the conclusion that the evidence adduced by the appellant did not prove execution of the cheque by the first respondent and accordingly the learned Magistrate acquitted her of the offence.

2. Heard the learned counsel for the appellant.

3. The appellant allegedly lent Rs.20 lakhs on the

promise that the first respondent would repay the amount within three months. The appellant also allegedly lent Rs.15 lakhs to the husband of the first respondent in February, 2012. Both these transactions were entered into because of the appellant's friendship with the family of the first respondent who was doing real estate business. The appellant alleged that he and the first respondent and her husband helped each other providing financial assistance and their families had cordial relationship. He further claimed that the first respondent is a family friend, which is the reason why he advanced the huge amount of Rs.20 lakhs to the first respondent and Rs.15 lakhs to her husband without taking any document to evidence the transactions and that too free of interest.

4. In the cross-examination of the appellant, who was examined as PW1, questions were put to him regarding his relationship with the family of the first respondent. He said that he knew the family for eight years. Though both parties resided in the same locality, the appellant had never

gone to the first respondent's house; he had never talked to the first respondent on phone. The first respondent resided in a rented house. The appellant did not know the native place of the husband of the first respondent. I have no doubt that the allegation that the appellant and the first respondent were family friends is false. It appears that as they resided in the same locality they had a nodding acquaintance. It is quite unnatural that the appellant advanced a loan of Rs.20 lakhs to the first respondent free of interest without obtaining any document to evidence the transaction.

5. Going by the evidence of the appellant, the first respondent did not repay the amount as promised by her. Still the appellant would say he lent Rs.15 lakhs to her husband one year later free of interest and without obtaining any document to evidence the transaction. This is unbelievable.

6. PW1 testified that the first respondent issued him a cheque. Later, he said that the first respondent brought a

filled up a cheque; but he did not see her writing anything in the cheque. It is a wonder that there is no mention about signing the cheque. But for the admission of the first respondent that the cheque bears her signature, there would have been no evidence even to prove that it bears her signature. Certainly, the attempt of the appellant is to compel her to prove non-execution of the cheque without discharging his burden to prove its execution.

7. Questions were put to PW1 with regard to his income tax returns and bank accounts. He admitted that the loan allegedly made to the first respondent is not shown in his income tax return. His admission proves that he did not deposit any big amount in his business account maintained with the banks.

8. The defence version is that the husband of the first respondent borrowed Rs.25 lakhs from K.G. Thomas brother of the appellant and as a security for the transaction K.G. Thomas obtained from him a cheque for Rs.25 lakhs and signed blank cheques from herself and her

husband. The husband of the first respondent used to repay the amount in installments. When Thomas committed foul play, the first respondent's husband refused to pay further installments. According to the first respondent, the cheque relied on by the appellant is one of those signed blank cheques given to Thomas. The first respondent has set up a case that, in fact, this litigation is conducted by K.G. Thomas.

9. There are circumstances indicating that the appellant is only a hired litigant. Documents have been produced to prove that K.G. Thomas brother of the appellant has filed complaints against the first respondent and her husband alleging that they had borrowed huge amounts from him and failed to repay them in spite of demand by notice. In the cross-examination PW1 admitted that he did not know the name of the advocate who sent notice to the first respondent before the complaint was filed. His further statement that the first respondent's husband issued cheque one year and eight months after the

loan transaction with him is admittedly wrong. PW1 could not mention the date of the cheque relied on by him in the complaint against the first respondent's husband. He said that it is a date in the 9^{th} month of the year. All these facts go to show that he has no idea about the facts of the case. This makes probable the defence version that he is conducting the litigation on behalf of his brother K.G.Thomas.

10. Learned counsel for the appellant relies on the decision of this Court in **Lekha v. Manickan [2006 (4) KLT 800]** in support of his argument that the defence version should be discarded. That was a case in which the court of the opinion that there was no reason to doubt or suspect the statements on oath of PW1. There was no probable explanation as to how the cheque happened to be in the possession of the complainant. In the case on hand the appellant's version is unbelievable and the first respondent's defence is probable.

11. The learned Magistrate rightly held that the

appellant failed to prove execution of the cheque. The facts and circumstances of the case revealed in the evidence are sufficient to rebut the presumption, if any, under Section 139 N.I. Act. The order of acquittal is justified. There is no merit in the appeal.

In the result, this appeal is dismissed.

Sd/-
K. ABRAHAM MATHEW
JUDGE

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P.A. TO JUDGE

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