

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

CRL.A.No. 216 of 2015 () IN Cr1.L.P..67/2015

ST 2034/2012 of JUDICIAL FIRST CLASS MAGISTRATE - I, CHERTHALA DATED

APPELLANT/COMPLAINANT:-

K.A. SUNILRAJ, AGED 38 YEARS
S/O. K.P.ANTONY, RESIDING AT KANAKKASSERY HOUSE
VARANAD, CHERTHALA, ALAPPUZHA - 688 543.

BY ADVS.SRI.M.R.HARIRAJ
SRI.P.A.KUMARAN
SMT.VINEETHA B.
SRI.K.RAJAGOPAL

RESPONDENTS/ACCUSED/STATE:-:

1. MURALEEKRISHNAN,
SOLE PROPRIETOR, PARNAR & COMPANY, THURAVUR SOUTH
CEHRTHALA - 688 532.

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

BY PUBLIC PROSECUTOR SMT. REMA.R.

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

smv

K.ABRAHAM MATHEW, J.

Crl.A. No.216 of 2015

Dated this the 9th day of March, 2015

J U D G M E N T

In this appeal the complainant in ST No. 2034/2012 on the file of Judicial First Class Magistrate-I, Cherthala assails the order of acquittal. The allegation was that the appellant/complainant advanced a loan of Rs. 1,60,000/- to the 1st respondent on 10.07.2012 and to discharge the liability, the latter executed a cheque "putting the date as 11.09.2012" and it was returned 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 u/s. 138 of the N.I. Act. The learned Magistrate came to the conclusion that the appellant failed to prove execution of the cheque and accordingly, he passed the order of acquittal.

2. Heard learned counsel for the appellant.

3. In the examination in chief the appellant, who was examined as PW1, stated that the 1st respondent signed the cheque and handed it over to him. There was no whisper about making the entries in it including the date. On the other hand, in the complaint the only specific averment is that the 1st respondent put the date in the cheque.

In the cross-examination also he has specifically stated that the date was put by the 1st respondent. There is no mention about filling up the cheque. To a specific question put to him in the cross-examination, PW1 said that he did not know who made the entries in the cheque. But he admitted that the signature and the entries in the cheque are in different inks. There is no explanation for it. It is in this context, the defence version that Ext. P1 was a signed blank cheque the 1st respondent had given to the appellant's father as a security for another transaction becomes relevant. When it was suggested to PW1 in the cross-examination that the 1st respondent had borrowed certain amount from his father in 2007, there was no denial. He just pretended ignorance. The fact that the entries and the signature in the cheque are in different inks makes probable the defence version that Ext. P1 was a signed blank cheque at the time of its delivery.

4. A perusal of the proof affidavit filed in lieu of examination in chief indicates that it was not easy for the appellant to command Rs. 1,60,000/- to pay it as a loan to the 1st respondent. It is very difficult to believe that he paid the huge amount of Rs. 1,60,000/- free of interest to the 1st respondent.

5. The learned Magistrate rightly came to the conclusion that the

appellant failed to prove execution of the cheque. No interference is called for.

In the result, this appeal is dismissed.

Sd/-
K.ABRAHAM MATHEW,
JUDGE

//true copy//

P.A to Judge

smv