IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

CRL.A.No. 219 of 2015 ()

AGAINST THE JUDGMENT IN CC 653/2008 of JUDICIAL FIRST CLASS MAGISTRATE COURT - I, THRISSUR DATED 30-09-2014

AGAINST THE ORDER IN Crl.L.P. 60/2015 of HIGH COURT OF KERALA DATED 13-02-2015

APPELLANT/COMPLAINANT:

ARUN SANKAR AGED 42 YEARS
S/O.SANKARAN NAIR, "SREESHYLAM", TC XXIX/88
VIVEKODAYAM, SCHOOL LANE
THRISSUR.REPRESENTED BY POWER OF ATTORNEY
HOLDER DHANAYAN V.R.
S/O. RAMAN, "UDAYAM", CHEROOR.

BY ADV. SRI.K.B.GANGESH
ADV.SMITHA CHATHANARAMBATH

RESPONDENT/ACCUSED AND STATE:
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1. T.M.VARGHESE
   2D PROVIDENCE GROVE, PROVIDENCE ROAD, KOCHI - 18.

2. STATE OF KERALA
   REPRESENTED BY THE PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, KOCHI - 31.

R2 BY SMT. REMA R., PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 18-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. ABRAHAM MATHEW, J.

Crl. Appeal No.219 of 2015
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Dated this the 18th day of March, 2015

JUDGMENT

The order of acquittal passed by the learned Chief Judicial First Class Magistrate - I, Thrissur in CC No.653/2008 is challenged in this appeal. The appellant was the complainant and the first respondent, the accused. The allegation was that the cheque issued by the first respondent for Rupees two lakhs to discharge a liability was dishonoured by the Bank for want of sufficient fund in the account and he in spite of demand by notice failed to pay the amount and thus committed the offence under Section 138 of the Negotiable Instruments Act. The learned Magistrate held that the evidence of the appellant is not sufficient to prove execution of the cheque and his case is not a believable one.

2. Heard learned counsel of the appellant.

3. The appellant who was examined as PW2 testified that the appellant and his wife Susan Varghese and one T.O.Varghese, who were partners of M/s.Soubhagya Fashions

approached him for financial assistance on the promise that he would get “returns at 14%”. He was not inclined to advance loan to the firm but was willing to lend money to the partners individually. He lent Rs.1,25,000/- to the first respondent who issued Ext.P1 cheque for Rupees two lakhs which included interest. It is seen from Ext.P1 that the first respondent signed the cheque in his capacity as the authorised signatory of the firm. The appellant is admittedly a business man. He is an income tax payee. He could not produce any reliable documents to prove advancing the loan. There is no reason for his not paying the amount by cheque.

4. The version of the first respondent is that Ext.P1 was a signed blank cheque he had issued to one Anil Kumar in connection with another transaction. According to PW1 and PW2, the first respondent brought a filled up cheque to the appellant and signed it in their presence. This is very unnatural. The attempt is to compel the first respondent to prove non-execution of the cheque without the appellant discharging his burden to prove its execution. In fact, the appellant has failed to prove execution of Ext.P1 cheque. The facts of the case make probable the defence version that Ext.P1 was a signed blank

cheque when it was delivered. The first respondent who was examined as DW1 deposed that it was a signed blank cheque given to one Anil Kumar in connection with another transaction. Nothing has been brought out in his cross examination that his evidence is false.

5. Learned Magistrate rightly came to the conclusion that the appellant failed to prove execution of the cheque and the presumption under Section 139 of the Negotiable Instruments Act does not arise. The improbabilities brought out in the cross-examination of PW2 are sufficient to rebut the presumption, if any. The order of acquittal passed by the learned Magistrate is fully justified. There is no merit in the appeal.

In the result, this appeal is dismissed.

SD/-
K. ABRAHAM MATHEW,
JUDGE

JV