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. 221 of 2015 () IN Crl.L.P..458/2014

ST 26/2013 (S.T. NO.205/2012 OF JFMC-I, PALA) of JUDICIAL FIRST CLASS MAGISTRATE COURT-II, PALA.

APPELLANT/COMPLAINANT:

BABY MATHEW
S/O.MATHEW, ARACKAL HOUSE, ANDOOR KARA
MEENACHIL TALUK, KURICHITHANAM VILLAGE
KOTTAYAM DISTRICT.

BY ADV. SRI.P.C.HARIDAS

RESPONDENT/ACCUSED-STATE:

1. V.A.SURESH @ SUGUNAN
S/O.ACHUTHAN, KANJIRAMKUDIYIRIPPLE, MANNACKANADU P.O.
MARANGATTUPALLY, KOTTAYAM DISTRICT.

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.221 of 2015

Dated this the 9th day of March, 2015

J U D G M E N T

Appellant was the complainant and the 1st respondent the accused in S.T. No.26/2013 on the file of the Judicial Magistrate First Class-II, Pala. On the allegation that the former advanced a loan of Rs. 50,000/- to the latter on 01.03.2010 and on 01.10.2011, he issued a cheque for the said amount to discharge the liability and it was returned dishonoured 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 offence u/s. 138 of the N.I. Act, the appellant filed the complaint. Learned Magistrate entered a finding that the appellant failed to prove execution of the cheque and accordingly, he acquitted the 1st respondent.

2. Heard the learned counsel for the appellant.

3. In his examination in chief the appellant, who was examined as PW1, stated that to discharge his liability to him the 1st respondent issued Ext.P1 cheque, the 1strespondent brought to the appellant a written up cheque and signed it before him. The defence version is that the appellant was a money lender and the 1st respondent was his collection agent and Ext.P1 was a signed blank cheque he had issued

as a security. It is very difficult to believe that the debtor would take a written up cheque to the creditor and sign it before him. This is a very suspicious circumstance.

4. It came out in the cross-examination of PW1 that though there is no allegation of commission of cognizable offence, the appellant dragged the 1st respondent to the police station and the Sub Inspector directed the 1st respondent to pay the amount in installments of Rs. 2,000/-. It was also brought out in his cross-examination that he had filed complaint against two other persons u/s. 138 of the N.I. Act.

5. All the above facts make probable the defence version that Ext.P1 was a signed blank cheque at the time of its delivery. That is the reason why the appellant deposed that the 1st respondent brought to him a written up cheque. He wanted to shift the burden of non-execution of the cheque to the 1st respondent without discharging his burden to prove its execution.

6. The appellant admitted in the cross-examination that the 1st respondent is a very poor man and Rs. 50,000/-is a very huge amount for him. It is very difficult to believe that the appellant advanced a loan of Rs. 50,000/- to him though he did not have the capacity to repay it. It is also very difficult to believe that the appellant lent the amount free of interest without obtaining any document to evidence the transaction.

7. The totality of the circumstances mentioned above compel me

to hold that the learned Magistrate rightly came to the conclusion that the appellant failed to prove execution of the cheque if it is assumed that execution is proved, the facts brought out in the cross-examination of PW1 are sufficient to rebut the presumption. No interference is called for.

In the result, this appeal is dismissed.

Sd/-
K.ABRAHAM MATHEW,
JUDGE

//true copy// P.A to Judge

smv