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. 237 of 2015 () IN Crl.L.P..73/2015

AGAINST THE ORDER/JUDGMENT IN STC 8900/2013 of JUDICIAL FIRST CLASS MAGISTRATE - III(MOBILE), KANNUR DATED 15-10-2014

APPELLANT/COMPLAINANT:

K.P.SAFARULLA, AGED 47 YEARS
S/O.MUSTHAFA, F(1) GREENLINE APARTMENTS
NEAR HARIJAN HOSTEL, THANA, KANNUR DISTRICT.

BY ADVS.SRI.K.R.AVINASH (KUNNATH)
SRI.ABDUL RAOOF PALLIPATH

RESPONDENTS/ACCUSED:

1. LAILA SOMARAJ, AGED 52 YEARS
W/O.SOMARAJ, VENU BHAVAN, PALLARI MANGALAM P.O.
MAVELIKKARA, ALAPPUZHA - 690 107.

2. THE STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

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.237 of 2015
..
Dated this the 9th day of March, 2015

J U D G M E N T

The order of acquittal passed by the learned Judicial Magistrate First Class - III, Kannur in ST Case No. 8900/2013 is challenged in this appeal by the complainant. The 1st respondent was the accused. The allegation was that 1st respondent borrowed from the appellant Rs.5,00,000/- and to discharge the liability, she issued a cheque dated 10.05.2012 for the said amount and the bank returned the cheque for want of sufficient fund in her account and in spite of demand by notice she failed to pay the amount and thus she committed the offence u/s. 138 of the N.I. Act. The learned Magistrate held that the appellant failed to prove execution of the cheque and accordingly he acquitted the 1st respondent of the offence.

2. Heard.

3. The details of the transaction are not disclosed either in the complaint or in the examination in chief of the appellant, which makes his case doubtful as observed by the Supreme Court

in ***Vijay v. Laxman & Anr.***[2013(3) SCC 86]**.**

4. It came out in the cross-examination of the appellant, who was examined as PW1, that for the first time he met the 1st respondent, who is a lady on 15.03.2012. This is the date on which he allegedly lent her Rs.5,00,000/-. He did not have any savings with him to pay the amount. He would like the court to believe that about 10 days ago he encashed the Fixed Deposit Receipt which stood in his wife's name and two days ago he pledged gold ornaments for Rs.75,000/- and the balance amount he borrowed from one Abdul Rahiman. There cannot be any doubt that the appellant encashed the FD Receipt and pledged the ornaments not to lend the amount to the 1st respondent as he was introduced the 1st respondent for the first time only on the date of the transaction. The very fact that he had to pledge his ornaments to raise a paltry amount of Rs.75,000/- though he had already encashed the FD Receipt which stood in his wife's name definitely indicates that that he was in urgent need of money. It is very difficult to believe that he advanced a loan of Rs.5,00,000/- to the 1st respondent.

5.The appellant does not claim to have seen the 1st respondent execute the cheque. He would say that the 1st respondent brought him a written up cheque. By no stretch imagination this can be believed because, as mentioned earlier, only on the date of transaction the appellant first met the 1st respondent in his life.

6. When all the above circumstances are taken together, it is clear that the appellant's case is false. He failed to prove execution of the cheque. Even it is assumed that he has proved execution of the cheque the other facts brought out in his cross-examination are sufficient to rebut the presumption arising u/s. 139 of the NI Act. The learned Magistrate was fully justified in passing the impugned order.

In the result, this appeal is dismissed.

Sd/-
K.ABRAHAM MATHEW,
JUDGE

//true copy// P.A to Judge

smv