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. 253 of 2015 () IN Crl.L.P.11/2015
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AGAINST THE JUDGMENT IN ST 173/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, VAIKOM DATED 27-10-2014

AGAINST THE ORDER IN Crl.L.P. 11/2015 OF HIGH COURT OF KERALA DATED 28.1.2015

APPELLANT/PETITIONER/COMPLAINANT:

SASIDHARAN
S/O.SANKARAN, CHITHIRA NIVAS, UDAYANAPURAM.P.O
THEKKEMURIYIL, VADAKKEMURI VILLAGE, VAIKOM TALUK.
KOTTAYAM DISTRICT

BY ADVS.SRI.C.M.NAZAR
SRI S.SUDARSANAN

RESPONDENTS/ACCUSED & STATE:
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1. **SUBAIR**
   S/O.SAIDU MUHAMMAD, PULINTHURUTHIL(H), VAIKOM.P.O
   PADINJATTUMCHERRY PADINJAREMURIYIL, NADUVILE VILLAGE
   VAIKOM TALUK 688 001

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

   R2 BY PUBLIC PROSECUTOR SRI. GITHESH R.

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.253 of 2015

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Dated this the 13th day of March, 2015

J U D G M E N T

This appeal arises from the order of acquittal passed by the learned Magistrate in S.T.No.173/2013 on the file of the Judicial First Class Magistrate Court-II, Vaikom. The appellant/complainant alleged that on 20.11.2012 the first respondent borrowed from him Rs.2 lakhs and to discharge the liability he issued a cheque 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 under Section 138 N.I. Act. The learned Magistrate held that the appellant's case is unbelievable and accordingly he acquitted the first respondent.

2. The appellant who was examined as PW1 stated that the first respondent brought to him a typewritten

cheque and signed it in his presence. This is very unnatural. Ordinarily a debtor would not take a typewritten cheque to his creditor and sign it before him. The attempt of the appellant is to compel the first respondent to prove non-execution of the cheque without discharging his burden to prove its execution.

3. In the cross-examination PW1 admitted that he belongs to below poverty line category. But he claimed that his monthly income was Rs.16,000/-. About three months before the alleged transaction he took a loan of Rs.10 lakhs from Urban Co-operative Bank Ltd., Vaikom. He was liable to repay the amount in monthly installments of Rs.20,000/-. But often he could not pay the installments. In August,2014 it was treated as a non-performing asset. He has no landed property. It is very difficult to believe that he had the capacity to advance a loan of Rs.2 lakhs. It is equally unbelievable that he would pay Rs.2 lakhs, that too free of interest. As observed by the Supreme Court in **K. Subramani v. K. Damodara Naidu [(2015) 1 SCC**

99] the proof that the complainant had no source of income to advance a loan is sufficient to acquit the accused. I find no illegality in the order of acquittal passed by the learned Magistrate. There is no merit in the appeal.

In the result, this appeal is dismissed.

Sd/-
K. ABRAHAM MATHEW
JUDGE

//True copy//

P.A. TO JUDGE

shg/