

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

CRL.A.No. 318 of 2015 ()

**AGAINST THE JUDGMENT IN ST 3370/2013 OF JUDICIAL FIRST CLASS
MAGISTRATE-I,PALAKKAD DATED 01-01-2015**

**AGAINST THE ORDER/JUDGMENT IN Cri.L.P. 89/2015 OF HIGH COURT OF KERALA
DATED 06-03-2015**

APPELLANT/COMPLAINANT:

**M/S.KALPETTA JANAKSHEMA MARUTHI CHITS (P) LTD
HEAD OFFICE AT ROYAL PLAZA, GUDALAI, KALPETTA POST
REPRESENTED BY IT'S ZONAL MANAGER H.D DEVAKUMAR
AGED 52 YEARS, S/O.DEVANA
RESIDING AT KRISHNA QUARTERS, AMBILLERY P.O KALPETTA
NOW REPRESENTED BY IT'S SENIOR MANAGER(LEGAL)
SHANMUGHADAS V.Y, S/O. YASODHARAN, AGED 45 YEARS
SHEEJA BHAVAN
KUNNAMBETTA P.O, WAYANAD DIST PIN 673 614**

BY ADV. SRI.U.P.BALAKRISHNAN

RESPONDENTS/ACCUSED & STATE:

**1. SURENDRAN S, AGED 27 YEARS
S/O.SANKARAN, KALLADI HOUSE, KALLADIKKODE P.O
PALAKKAD DISTRICT PIN 678 596**

**2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM PIN 682 031**

R2 BY PUBLIC PROSECUTOR SMT. REMA R.

**THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 01-04-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

K. ABRAHAM MATHEW, J.

Crl.A.No.318 of 2015

Dated this the 1st day of April, 2015

J U D G M E N T

The complainant in ST 3370/2013 on the file of the learned Judicial First Class Magistrate-I, Palakkad is the appellant and the accused the first respondent. On the allegation that the first respondent who was a subscriber to a chitty conducted by the appellant executed a cheque in its favour to discharge his liability and the cheque 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 appellant filed the complaint. Learned Magistrate acquitted the first respondent mainly for the reason that the admission of PW1 who was examined on behalf of the appellant proves that the whole amount covered by the cheque was not due to it.

2. Heard.

3. In the cross-examination the appellant who was

examined as PW1 admitted that the amount covered by the cheque included the amount due to it and its interest and other charges including the expenses the appellant might incur if it instituted a litigation against the first respondent. This is an unequivocal admission that the amount covered by the cheque included an amount which was not actually due to the appellant. By Ext.P5 notice the appellant demanded payment of the amount which was actually not due to it. The learned Magistrate rightly found that in view of the decision in **Indus Airways Pvt. Ltd v. Magnum Aviation Pvt. Ltd. [2014 (2) KLT SN 30 (C.No.42) SC]** the complaint is not maintainable. 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/