

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

CRL.A.No. 1874 of 2008

S.T.NO.312/2007 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II,THAMARASSERY

APPELLANT(S)/COMPLAINANT :

**T.S.MATHEW, S/O.SAMUEL,
AGED 65 YEARS, ROCK VILLA, THEKKINAPANALIL,
MUKKOM.**

BY ADV. SRI.P.R.SREEJITH

RESPONDENT(S)/ACCUSED :

- 1. ABDUL BASHEER.P.T,S/O.ALAVI
PALLITHODI VEEDU, MAMBADU AMSOM DESOM,
NILAMBOOR TALUK.**
- 2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

**R1 BY ADV. SRI.P.SAMSUDIN
R2 BY PUBLIC PROSECUTOR SRI.R.GITHESH**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

K. ABRAHAM MATHEW, J.

Crl.A. No.1874 of 2008

Dated this the 9th day of January, 2015

O R D E R

The appellant was the complainant in S.T.No.312/2007 on the file of the Judicial Magistrate of First Class II, Thamarassery. He alleged that on 10.12.2006 the first respondent accused borrowed from him Rs.35,000/- undertaking to repay the amount within one month and in discharge of that liability, on 14.1.2007, issued a cheque bearing the date 20.1.2007 and the cheque was dishonoured for the reason that payment was stopped and in spite of demand by notice he failed to pay the amount covered by the cheque and he thus committed the offence under Section 138 of N.I. Act. The learned Magistrate disbelieved the case of the appellant and acquitted the first respondent. This order of acquittal is challenged in this appeal.

2. Heard.

3. The definite case of the appellant is that on 10.12.2006 the first respondent borrowed from him Rs.35,000/- and to discharge that liability, on 14.1.2007, he issued Ext.P1 cheque bearing the date 20.1.2007. The issuance of cheque is not disputed. The defence version is this the appellant was the owner of about 18 acres of land; he entered into an agreement with DW1 Latheef for its sale. The first respondent was the broker. Latheef entered into an agreement with a stranger for sale of the property. After the negotiations were concluded the appellant sold certain valuable trees which were standing in the property. So the stranger who entered into the agreement with DW1 Latheef refused to proceed with the agreement. Thereupon, a negotiation was held in the presence of the appellant. It was decided to give Rs.1 lakh as compensation to the person who purchased the trees. The agreement was that DW1 Latheef would pay Rs.30,000/- and the first respondent and another broker Rs.35,000/- each. For the amount of Rs.35,000/- the first respondent agreed to pay and, he

issued Ext.P1 cheque. Later, when the brokerage was paid the appellant deducted this Rs.35,000/- and the balance amount alone was paid.

4. In his evidence PW1 admitted that there was a property deal involving the first respondent and he paid the latter his brokerage. It was brought out in his cross-examination that the first respondent was paid his brokerage in or about May 2007. But he added that he did not correctly remember it. It also dropped in his evidence that when the brokerage was paid no amount was due to him from the first respondent. If this evidence is acceptable, it is clear that the first respondent had discharged the liability under Ext.P1 cheque before May 2007.

5. To prove his version the first respondent examined DW1 Latheef, who entered into an agreement with the appellant for purchase of his property. It is through him the first respondent brought out his case, which has already been mentioned. He deposed that the

first respondent issued the cheque in December 2006. DW1 paid the appellant in January 2007, the amount of Rs.30,000/- he had undertaken to pay the complainant. Thereafter, the sale deed was registered in favour of the purchaser. He also deposed that the appellant paid brokerage to the first respondent after deducting the amount covered by Ext.P1 cheque. This evidence stands unchallenged in the cross-examination.

6. The facts brought out in the cross-examination of PW1 and DW1 unerringly prove that before the notice was issued demanding the amount covered by Ext.P1 cheque, the first respondent had discharged his liability. The learned Magistrate rightly came to the conclusion that the first respondent is entitled to acquittal. No interference is called for.

In the result this criminal appeal is dismissed.

Sd/-
K. ABRAHAM MATHEW
JUDGE
//True copy//
P.A. TO JUDGE

shg/