

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. 2331 of 2009

**C.C.NO.28/2009 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II,
PARAPPANANGADI**

LEAVE PETITIONER/COMPLAINANT :

**G.S.WARRIER
PARVATHY NILAYAM, KOLAPPURAVAN NORTH, P.O.A.R.NAGAR
TIRURANGADI TALUK.**

**BY ADVS.SRI.HARISH R. MENON
SRI.K.T.SHYAMKUMAR**

RESPONDENT(S)/ACCUSED & STATE OF KERALA :

- 1. M. THANKAMANI, AGED 60 YEARS,
MANAGING TRUSTEE, BRAHMANENDA CHARITABLE TRUST,
KALLERI P.O, POOVATTU PARAMBA, KOZHIKODE DISTRICT.**
- 2. MR.AJAY, S/O.M.THANKAMANI, AGED 35 YEARS,
TRUSTEE, BRAHMANENDA CHARITABLE TRUST, KALLERI,
P.O.POOVATTU PARAMBA, KOZHIKODE DISTRICT.**
- 3. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, ADVOCATE GENERAL OFFICE, ERNAKULAM.**

**R1 & R2 BY ADV. SRI.T.PRASAD
R3 BY PUBLIC PROSECUTOR SMT.BINDU GOPINATH**

**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.2331 of 2009

Dated this the 9th day of January, 2015

J U D G M E N T

The appellant was the complainant and respondents 1 & 2 are the accused in C.C.No.28/2009 on the file of the Judicial Magistrate of Ist Class-II, Parappanangadi. The appellant alleged that in September 2006, respondents 1 & 2, who are managing trustee and trustee respectively of Brahmananda Charitable Trust borrowed from him Rs.3 lakhs to purchase a property for the Trust; when the amount was demanded, they issued a cheque bearing the date 18.10.2007; the cheque was dishonoured for want of sufficient fund in the account and in spite of demand they failed to repay the amount and they thus committed the offence under Section 138 of N.I. Act. Respondents 1 & 2 are mother and son. Their case was that they had no transaction with the appellant and they did not issue the cheque relied on by the appellant. The learned Magistrate found that the appellant failed to prove his case and

accordingly acquitted respondents 1 & 2 of the offence. The order of acquittal is challenged in this appeal.

2. Heard the learned counsel on both sides.

3. Respondents 1 & 2 do not admit genuineness of their signatures in Ext.P1 cheque. So it is the duty of the appellant to prove it. He does not claim to have seen respondents 1 & 2 fill up the cheque or sign it. His testimony is very vague. What he (PW1) has said in his affidavit filed in lieu of examination chief is that respondents 1 & 2 handed over Ext.P1 cheque to him at his residence and it is they who have put the signatures in it. No attempt was made by the appellant to prove execution of Ext.P1 cheque by respondents 1 & 2. So the genuineness of Ext.P1 cheque has not been proved by him.

4. The appellant would say that he advanced the amount of Rs.3 lakhs as a loan in September 2006; Ext.P1 cheque was issued later when he demanded the amount. But the date on which the cheque was issued is not disclosed. The cheque bears the date '18.10.2007'. It is

unbelievable that the appellant advanced a huge amount of Rs.3 lakhs without taking any document as evidence, let alone security for the transaction. It is equally unbelievable that he would advance a loan of Rs.3 lakhs free of interest for one year. So even if it is assumed that execution of the cheque is proved, the presumption under Section 139 of N.I. Act stands rebutted by the improbabilities in the case. The learned Magistrate is fully justified in passing the order of acquittal. The appeal has no merits.

In the result, this criminal appeal is dismissed.

Sd/-
K. ABRAHAM MATHEW
JUDGE

//True copy//

P.A. TO JUDGE

shg/