IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 1936

CRL.A.No. 827 of 2013 ()

AGAINST THE ORDER/JUDGMENT IN ST 231/2012 of JUDICIAL FIRST CLASS MAGISTRATE COURT - III, KOCHI DATED 25-03-2013

Crl.L.P. 354/2013 of HIGH COURT OF KERALA DATED 14-06-2013
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APPELLANT/COMPLAINANT:
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K.G.MURALEEDHARAN, AGED 64,
S/O. GANGADHARAN, KOLLAPARAMBIL HOUSE, P.D.ROAD
PALLURUTHY, KOCHI-6.

BY ADV. SRI.S.RAJKUMAR

RESPONDENTS/ACCUSED:
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1. UMANAND
PROPRIETOR, M/S. SREERAM TRADERS, PALLURUTHY
KOCHI-6, RESIDING AT H.NO. 23/2021
KANNAMKULANGARA LANE, PALLURUTHY, KOCHI-6.

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

R1 BY ADVS. SRI.JIMMY GEORGE (VATTATHARA)
SRI.T.JEEJAN

R2 BY PUBLIC PROSECUTOR SMT. BINDU GOPINATH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VPV

K. ABRAHAM MATHEW, J.

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Crl.A.No.827 of 2013

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Dated this the 6th day of January, 2015

J U D G M E N T

This appeal has been preferred by the complainant in a case in which the allegation was that the first respondent committed the offence under Section 138 of N.I. Act. The trial court found that the appellant has failed to prove his case, and accordingly, it acquitted the first respondent of the offence.

2. Ext.P1 is the cheque relied on by the appellant. The amount covered by it is Rs.1,50,000/-. The appellant's case is that the first respondent had borrowed from him Rs.1,50,000/- and to discharge the liability on 15.09.2010 he issued Ext.P1 cheque. It is very strange that though the amount allegedly advanced as loan is handsome, the appellant did not even take any document to evidence the transaction, let alone security for the repayment. It is also very strange that the amount was given free of interest.

3. Neither in the notice, nor in the evidence the

appellant disclosed the date on which he advanced the loan or the circumstances in which he did so. Even though he was given an opportunity to give an explanation in the cross-examination, he did not avail himself of that opportunity. As held by the Supreme Court in **Vijay v. Laxman & Anr. [(2013) 3 SCC 86]** this is a circumstance which makes the appellant's case unbelievable.

4. The appellant's case is that he paid the amount in cash. It is improbable that he had kept Rs.1,50,000/- in cash at his house.

5. The appellant would say that the first respondent gave him a written up and signed cheque. He does not claim to have seen the first respondent sign the cheque. The version of the first respondent is that Ext.P1 was a signed blank cheque, he had handed over to the appellant's brother who was running a chitty. The attention of the appellant, who was examined as PW1, was drawn to the fact that the signature and other particulars in the cheque are in different inks. He pretended that they are not in different

inks. In fact, they are in different inks. This reveals that the appellant is not an honest man. He has failed to prove execution of the cheque. There is no presumption under Section 139 of N.I. Act.

6. Even if it is assumed that execution of Ext.P1 cheque is proved, the circumstances mentioned above are sufficient to rebut the presumption as laid down by the Supreme Court in **M.S. Narayana Menon v. State of Kerala [AIR 2006 S.C. 3366]**. The trial court rightly held that the appellant has failed to prove his accusation against the first respondent. The order of acquittal is not liable to be interfered with.

In the result, this appeal is dismissed.

Sd/-
K. ABRAHAM MATHEW
JUDGE

//True copy//

P.A. TO JUDGE

shg/