IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

CRL.A.No. 1436 of 2010 ( )

AGAINST THE JUDGMENT IN CC 265/2007 of JUDICIAL FIRST CLASS MAGISTRTE COURT, RAMANKARI DATED 30-04-2010

AGAINST THE JUDGMENT IN Crl.L.P. 681/2010 of HIGH COURT OF KERALA DATED 02-07-2010

APPELLANT/COMPLAINANT:

GOPALAKRISHNAN NAIR,
S/O.S.KUNCHUKURUP, SREE BALA KAMALAM, KAVALAM P.O.
KUTTANADU.

BY ADV. SRI.B.PRAMOD

RESPONDENT(S)/ACCUSED & STATE:
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1. **THULASIDAS, RAMA NILAYAM,**
   KANDANKARY P.O., THAYAMKAARY, KUTTANADU
   ALAPPUZHA.

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

   R2 BY SRI GITHESH R, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JV

K. ABRAHAM MATHEW, J.

Crl.Appeal No. 1436 of 2010

Dated this the 18th day of March, 2015

JUDGMENT

The order of acquittal passed by the learned Magistrate in CC No.265/2007 of Judicial First Class Magistrate, Ramankary is challenged in this appeal. The appellant's allegation was that the 1st respondent borrowed from him Rs.80,000/- and to discharge the liability he issued a cheque bearing date 26.03.2007 and when presented, it was dishonoured by the bank for want of sufficient fund in his account and in spite of demand by notice, he failed to pay the amount and thus he committed the offence under Section 138 of the Negotiable Instruments Act. The learned Magistrate disbelieved the case of the appellant that the cheque relied on by him was executed by the 1st respondent and accordingly, she passed the impugned order.

2. Heard learned counsel for the appellant. There has been no representation for the 1st respondent though notice was served on him.

3. The appellant is an advocate. He was an official

receiver attached to the District Court, Alappuzha from 1996 till 2001. Later, he was appointed Administrator General of Kerala.

4. In the complaint or in the examination in chief the date on which the appellant borrowed the amount or issued the cheque does not find a place. Only in the cross-examination, the appellant, who was examined as PW1, deposed that the loan was advanced and the cheque was issued on 24.03.2007. The failure of the appellant to mention these relevant dates assumes much significance in the nature of the case. As observed by the Supreme Court in **Vijay v. Laxman and Another [2013 (3) SCC 86]** this makes his case doubtful.

5. The evidence regarding the execution may be examined first. The appellant(PW1) deposed that the first respondent signed the cheque "after putting the date" in it. His wife, who was examined as PW2, testified that she saw the first respondent filling up and signing the cheque. The question is whether this is believable.

6. In the cross-examination PW1 stated that the transaction mentioned in the complaint is the only transaction he had with the first respondent in his personal capacity. But he added that he did not remember whether he had filed any other

complaint against the appellant in his personal capacity. He was compelled to admit that on his instructions an advocate issued Ext.D1 notice dated 26.02.2003 alleging that the first respondent had borrowed from him Rs.61,000/-. No doubt the appellant's testimony that the transaction disclosed in the complaint in this case alone is the transaction he had with the first respondent in his personal capacity is false. Suppression of truth is evident.

7. In his capacity as official receiver, the appellant used to auction the right to raise paddy cultivation in about 46 acres of land in Kuttanad. In the cross-examination to a specific question put to him, he stated that the first respondent had not purchased the right to cultivate the land and there was no document showing that he had purchased right or cultivated the land during his tenure as official receiver. But he knows that the auction purchasers used to assign their right to strangers, which according to him, was illegal. But his evidence is that the amount of Rs.61,000/- demanded by him from the first respondent in Ext.D1 notice was the amount the appellant had borrowed from him to get the right to cultivate the land by assignment from the auction purchaser. Does it not mean that knowing fully well that it was illegal he lent the money to take

the assignment?

8. The first respondent's definite case is that one Gangadharan who used to purchase the right to cultivate the land in auction was benami of the appellant and the amount claimed by the appellant in this case was the illegal gratification he wanted to get from the first respondent.

9. There is no dispute that Ext.D2 is a document filed by the appellant before the District Court, Alappuzha in his capacity as official receiver. He submitted to the Court that one Gangadharan and the accused were put in possession of 46 acres of paddy field and they were the auction purchasers for the period from 04.09.1999 to 31.03.2000. If the appellant's testimony that the first respondent never purchased the right to cultivate the land is true, how did he (the appellant) file a statement before the District Court to the effect that he (the first respondent) and Gangadharan were the purchasers of the right. There is no doubt that the transactions entered into by the appellant in his capacity as official receiver were not transparent.

8. The available evidence compels me to hold that the case of the appellant that the first respondent borrowed from him

Rs.80,000/- and issued Ext.P1 cheque to discharge his liability is false. The learned Magistrate rightly came to the conclusion that the appellant's case is not true. No interference is called for.

In the result, this appeal is dismissed.

SD/-
K. ABRAHAM MATHEW,
JUDGE

JV