

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

Crl.L.P.No. 1 of 2015 ()

**AGAINST THE JUDGMENT IN ST 1512/2011 OF JUDICIAL I CLASS MAGISTRATE,
KUTHUPARAMBA DATED 21-11-2014**

PETITIONER/COMPLAINANT:

**E.N.HAREENDRAN, AGED 59 YEARS
S/O.KUNHAMBU, 'SHYMA BHAVAN' PAZHAYANIRATH
NEAR S.N MADAM, KUTHUPARAMBA P.O, KANNUR DISTRICT**

**BY ADVS.SRI.T.REMESH BABU
SRI.C.K.SREEJITH**

RESPONDENTS/ACCUSED & STATE:

**1. K.SOBHANA, AGED 48 YEARS
W/O.RAMESH BABU, 'KANIKA'CHEKKIPARAMBATH
AMBILAD POST KUTHUPARAMBA, KANNUR DISTRICT 670 643**

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

R2 BY PUBLIC PROSECUTOR SRI. GITHESH R.

**THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON
20-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Cri.L.P.No. 1 of 2015 ()

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEXURE A1. COPY OF THE JUDGMENT IN S.T.C NO.1512/2011 ON THE FILE
OF JFCM KUTHUPARAMBA, KANNUR**

RESPONDENTS' ANNEXURES:

NIL

//True copy//

P.A. TO JUDGE

Shg/

K. ABRAHAM MATHEW, J.

Crl.L.P.No.1 of 2015

Dated this the 20th day of January, 2015

O R D E R

The order of acquittal passed by the learned Judicial First Class Magistrate, Kuthuparamba in S.T.No.1512/2011 is sought to be challenged in appeal. The petitioner filed the complaint alleging that in the first week of August 2010, the first respondent borrowed from him Rs.3,60,000/- undertaking to repay the amount within six months and on 19.1.2011 she repaid Rs.60,000/- only and for the balance amount she issued a cheque and when it was presented for encashment it was returned dishonoured for want of sufficient fund in the account and in spite of demand by notice she failed to pay the amount and she thus committed the offence under Section 138 of N.I. Act. The learned Magistrate found that the petitioner's story is unbelievable for various reasons, and accordingly, she acquitted the first respondent. The petitioner seeks leave for filing appeal against the order of acquittal.

2. Heard the learned counsel for the petitioner.

3. The petitioner does not claim to have seen the first respondent execute the cheque which was marked as Ext.P1. His case is that the accused gave him a written up and signed cheque but she signed again in Ext.P1 cheque in his presence. The date on which the amount was lent does not find a place in the complaint. The agreement was to repay the amount within six months. The petitioner is a businessman. But it is very strange that though the amount is huge there was no agreement to pay interest.

4. The petitioner is an income tax payee. The amount mentioned in the complaint does not find a place in the income tax return, for which, there is no explanation on his part.

5. In the cross-examination, the petitioner, who was examined as PW1, stated that the first respondent was jobless and had no income though her husband worked abroad. It is significant that the first respondent used to borrow from the petitioner even the very small amount of

Rs.10/-, which indicates that the first respondent did not have the capacity to repay the amount of Rs.3,60,000/-. It is unbelievable that the petitioner would advance a loan of Rs.3,60,000/- even without a scrap of paper as evidence to such a person.

6. All the above circumstances taken together are sufficient to rebut the presumption under Section 139 of N.I. Act if at all there is such a presumption in this case. The learned trial court rightly acquitted the first respondent. This is not a fit case to grant leave.

In the result, Crl. Leave Petition is dismissed.

Sd/-
K. ABRAHAM MATHEW
JUDGE

//True copy//

P.A. TO JUDGE

shg/