IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

CRL.A.No. 96 of 2011 ( )

AGAINST THE ORDER/JUDGMENT IN Crl.L.P. 1088/2010 OF HIGH COURT OF KERALA DATED 18-11-2010

AGAINST THE JUDGMENT IN CC 671/2008 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, MANANTHAVADY DATED 26-04-2010

APPELLANT/COMPLAINANT:

SINDHU M
D/O. LATE SRI. MADHAVAN
NARIKKAL HOUSE, ARATTUTHARA POST, MANANTHAVADY
(THROUGH POWER OF ATTORNEY HOLDER - PREMAJA,
W/O. VIJAYAN).

BY ADV. SRI.GRASHIOUS KURIAKOSE (SR.)

RESPONDENT/ACCUSED & STATE:

---

1. **SUNIL ALIKKAL, S/O. MADHAVAN**
   PUTHENPURAYIL HOUSE, CLUB KUNNU, MANANTHAVADY POST
   WAYANAD 670 645.

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

R2 BY PUBLIC PROSECUTOR SRI. GITHESH R.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SHG/

K. ABRAHAM MATHEW, J.

- -

Crl.A.No.96 of 2011

- -

Dated this the 18th day of February, 2015

<u>J U D G M E N T</u>

This is an appeal filed by the complainant in C.C.No.671/2008 on the file of the Judicial Magistrate of First Class-II, Mananthavady. The first respondent was the accused in the case. The allegation was that Ext.P2 cheque issued by him in favour of the appellant to discharge a liability was returned dishonoured for want of sufficient fund and he failed to pay the amount in spite of demand by notice and thus he committed the offence under Section 138 of N.I. Act. The learned Magistrate held that the appellant failed to produce evidence to prove that the cheque is supported by consideration.

2. Heard the learned senior counsel for the appellant and the learned counsel for the first respondent.

3. The father of the appellant was a guarantor for repayment of the loan of Rs.50,000/- the first respondent

had taken from State Backward Classes Development Corporation. When the first respondent failed to pay the installments, the creditor initiated proceedings under the R.R. Act against the appellant's father to recover the amount. Every month Rs.1,000/- was recovered from the salary of the appellant's father. He died on 19.5.2005. To get non-liability certificate to claim benefits due to his legal representatives the liability had to be cleared. So the appellant remitted Rs.27,000/-. To discharge the said liability the first respondent issued Ext.P2 cheque for Rs.35,000/-. When it was returned dishonoured, she sent Ext.P3 lawyer notice to him to which there was no response. This is her case.

4. The complaint was filed by the appellant in her own capacity and in her capacity as the power of attorney holder of the other legal heirs of her father. It was not at all necessary because she is the payee of the cheque.

5. In her examination-in-chief, the appellant who was examined as PW1, stated that Ext.P2 cheque was

written and signed by the first respondent. The cheque was issued due to the intervention of some mediators, she deposed. In the cross-examination there was a suggestion that the first respondent did not issue the cheque. But there was no suggestion that the cheque is not in his handwriting or that he is not the author of the signature in it. Moreover, genuineness of the cheque is admitted in the written statement filed by the first respondent after his examination under Section 313 Cr.P.C. This was sufficient for the trial court to hold that the presumption under Section 138 of N.I. Act arises. But that was not done by the learned Magistrate. Unfortunately, he took the view that the appellant was bound to produce documents to prove that the cheque was supported by consideration.

6. Apart from the presumption under Section 139 of N.I. Act, there is sufficient evidence to prove that the cheque is supported by consideration. The first respondent did not dispute the loan transaction or that the appellant's father was the surety. His version is that it was the loan

taken to meet the marriage expenses of the appellant also, for which there is no reliable evidence.

7. The version given by the first respondent in the statement filed by him after he was examined under Section 313 Cr.P.C. is a different one. He would say that the appellant's father requested him for a loan of Rs.50,000/- and as he had no money with him, he took the loan to help the appellant's father. He would further say that Ext.P2 was the cheque given to appellant's father in connection with the transaction. Still there is no denial of his handwriting or signature in Ext.P1. The story narrated by him in the written statement is a cock-and-bull story.

8. The trial court should have found the first respondent guilty of the offence under Section 138 of N.I. Act. The order of acquittal passed by it is illegal.

In the result, this appeal is allowed and in reversal of the order of acquittal passed by the trial court, the first respondent is found guilty of the offence under Section 138 of N.I. Act, and accordingly, he is convicted of the said offence. He is sentenced to pay a fine of Rs.70,000/- (Rupees seventy thousand only), and in default of payment of fine to undergo simple imprisonment for six months. If the fine amount is realised, it shall be paid to the appellant.

Sd/-

K. ABRAHAM MATHEW
JUDGE

//True copy//

P.A. TO JUDGE

shg/