IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

CRL.A.No. 216 of 2011 ( )

AGAINST THE ORDER IN Crl.L.P. 38/2011 OF HIGH COURT OF KERALA DATED 17-01-2011

AGAINST THE JUDGMENT IN CC 152/2006 OF JUDICIAL MAGISTRATE OF FIRST CLASS-II(FOREST OFFENCES),PUNALUR DATED 19.10.2010

APPELLANT/COMPLAINANT:

P.N.GOPINATHAN, AGED 60 YEARS,
S/O.NANU, ANIL NIVAS, MANIYAR P.O.
PUNALUR VILLAGE, PATHANAPURAM TALUK.

BY ADVS.SRI.V.V.RAJA
SRI.M.T.SURESHKUMAR

RESPONDENTS/ACCUSED & STATE:
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1. N.RAVI, AGED 58 YEARS, REKHA BHAVAN,
   THOLIKKODE P.O., PUNALUR - 691333.

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

R-1 BY ADV. SRI.C.R.SIVAKUMAR
R-2 BY PUBLIC PROSECUTOR SRI. GITHESH R.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

shg/

K. ABRAHAM MATHEW, J.

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Crl.A.No.216 of 2011

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Dated this the 1st day of April, 2015

J U D G M E N T

The appellant was the complainant in C.C.No.152/2006 on the file of the Judicial Magistrate of First Class-II (Forest Offences), Punalur. The first respondent was the accused. The complainant's case was that the first respondent along with two others borrowed from him Rs.10 lakhs on 18.12.2001 executing a promissory note and in partial discharge of that liability the first respondent issued a cheque and it was returned dishonoured by the bank for want of sufficient fund in the account and in spite of demand by notice he failed to pay the amount and thus he committed the offence under Section 138 N.I. Act. The learned Magistrate refused to believe the case of the appellant and accordingly, he acquitted the first respondent. The order of acquittal is challenged in this appeal.

2. During the pendency of the appeal the appellant

died. No legal representatives have come forward to prosecute the appeal.

3. The case of the first respondent is that he was a subscriber to a chitty conducted by the appellant and when he prized the amount the appellant obtained from him signed blank stamp papers as security and the appellant wrote up a promissory note on the signed blank paper. It is his further case that he had issued signed blank cheque also as a security and this was misused by the appellant.

4. Neither in the complaint nor in the examination-in-chief of the appellant (PW1) the date on which the cheque relied on by him was issued is disclosed. This makes his case doubtful.

5. In the cross-examination of the appellant (PW1) it was brought out that he was a foreman of a chitty. He was a money lender. He disclosed that the amount paid to the first respondent was taken from his business. But he admitted that the payment is not entered in his accounts. He did not maintain day book or ledger. The amount

allegedly paid to the first respondent is not shown in his income tax return. It is not at all believable that the appellant did not maintain an account though he was doing business as a money lender and was conducting chitties. He has suppressed the account books. The inference is that if they had been produced it would have disproved his case. The learned Magistrate rightly came to the conclusion that the defence version is probable. 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/