

**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.A.No. 492 of 2011 ( )**  
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**AGAINST THE ORDER IN Cr.L.P. 210/2011 OF HIGH COURT OF KERALA DATED  
14-03-2011**

**AGAINST THE JUDGMENT IN CRA 204/2007 OF ADDITIONAL SESSIONS JUDGE-I,  
THIRUVANANTHAPURAM DATED 09-11-2010**

**APPELLANT/IST RESPONDENT/COMPLAINANT:**  
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**SUBHASH,S/O.GOVINDA PILLAI, PANAYIL VEEDU,  
KADAMPATTUKONAM, NAVAIKULAM DESOM  
NAVAIKULAM VILLAGE.**

**BY ADVS.SRI.BASANT BALAJI  
SRI.R.GOPAN**

**RESPONDENTS/APPELLANT & 2ND RESPONDENT/ACCUSED & STATE:**  
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**1. V.GURUMOOPANAR,S/O.VELUMOOPANAR,  
23, B/18, KUMARAPURAM  
5TH LINE, SIVAGIRI, THIRUNELVELI DISTRICT  
TAMILNADU 600 018.**

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

**R2 BY PUBLIC PROSECUTOR SRI. GITHESH R.**

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

**shg/**

**K. ABRAHAM MATHEW, J.**

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**Crl.A.No.492 of 2011**  
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**Dated this the 20<sup>th</sup> day of January, 2015**

**J U D G M E N T**

This appeal arises from the order of acquittal passed by the learned Additional Sessions Judge-I, Thiruvananthapuram. The appellant was the complainant in C.C.328/2002 on the file of the Judicial First Class Magistrate Court, Varkala. His case was that to discharge a liability the first respondent accused issued a cheque for Rs.3 lakhs in his favour and it was returned dishonoured for want of funds and in spite of demand the first respondent failed to pay the amount and he thus committed the offence under Section 138 of N.I. Act. The learned Magistrate found the first respondent guilty and convicted and sentenced him to undergo simple imprisonment for six months and to pay Rs.3 lakhs as compensation. In Criminal Appeal No.204/2007 the learned Additional Sessions Judge reversed the finding and acquitted the first respondent. This order of acquittal is challenged in this appeal.

2. The appellant does not claim to have seen the first respondent execute the cheque which was marked as Ext.P1. His version is that the first respondent brought to him a written up and signed cheque. This is totally unbelievable. The attempt of the appellant was to compel the first respondent to adduce evidence to prove that he did not execute the cheque. This itself indicates that the appellant is not a bona fide litigant.

3. The nature of transaction is not disclosed in the complaint or in the examination-in-chief of the appellant, who was examined as PW1. The date on which the first respondent allegedly borrowed the amount or issued the cheque is not disclosed in the complaint or in the examination-in-chief. As held by the Supreme Court in **Vijay v. Laxman & Anr. [(2013) 3 SCC 86]** this makes the complainant's case doubtful. In the cross-examination PW1 deposed that the cheque was issued on the date on which the amount was borrowed. This does not go with the averment in the complaint. In the cross-examination PW1

admitted that the entries in the cheque and the signature in it are in different inks, which indicate that entries were made in a signed blank cheque, which makes probable the defence version that when it was handed over it was a signed blank cheque.

4. In the cross-examination of PW1 it was brought out that the first respondent was heavily indebted to many persons when the appellant allegedly advanced a loan of Rs.3 lakhs. This makes the appellant's case unbelievable.

5. The amount the appellant claims to have advanced is Rs.3 lakhs. Going by his version in the complaint there was no agreement for payment of interest. This is unnatural. But in the cross-examination he made an attempt to prove that there was an agreement to pay interest and the first respondent used to pay interest. This is also improbable.

6. The first respondent is a Tamilian doing petty business. There is no sufficient evidence to hold that the appellant had no close relationship with him. It is

unbelievable that the appellant would advance a loan of Rs.3 lakhs to such a person.

7. As held by the Supreme Court in **Kundan Lal Rallaram v. Custodian, Evacuee Property, Bombay [AIR 1961 SC 1316]** and in **M.S. Narayana Menon v. State of Kerala [AIR 2006 S.C. 3366]** the above facts are sufficient to rebut the presumption, if any, under Section 139 of N.I. Act. The learned Sessions Judge was fully justified in acquitting the first respondent. No interference is called for.

In the result, this appeal is dismissed.

Sd/-  
**K. ABRAHAM MATHEW**  
**JUDGE**

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P.A. TO JUDGE

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