

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

CRL.A.No. 1289 of 2014

STC 5794/2011 of JUDICIAL FIRST CLASS MAGISTRATE COURT, THALASSERY
DATED 25-07-2014

PETITIONER/COMPLAINANT:-:

K.DILEEPAN
S/O.ACHUTHAN, RADHAS HOUSE, AKG ROAD
P.O.THAZHE CHOVVA, KANNUR DISTRICT.

BY ADVS.SRI.C.P.PEETHAMBARAN
SMT.MINI.V.A.

RESPONDENTS/ACCUSED & STATE:-

1. K.MURALI
S/O.SHYAMALA, KUZHICALIL HOUSE, P.O.KURICHYIL
THALASSERY, KANNUR DISTRICT - 670 701.

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

BY PUBLIC PROSECUTOR SMT. REMA . R.

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
13-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

smv

K. ABRAHAM MATHEW,J.

Crl.Appeal No.1289 of 2014

Dated this the 13th day of February, 2015

JUDGMENT

On the allegation that the first respondent borrowed from him Rs.1,00,000/- in the first week of October, 2011 and to discharge liability he issued a cheque bearing date 25.10.2011 and it was returned for want of sufficient fund in the account and in spite of demand by notice, he failed to pay the amount, the appellant filed a complaint alleging that the first respondent committed the offence under Section 138 of the Negotiable Instruments Act. After the trial, the learned Magistrate held that the evidence of the appellant is at variance with his pleadings and he failed to prove execution of the cheque and accordingly he acquitted the first respondent of the offence.

2. Heard the learned counsel for the appellant.

3. In the complaint the date on which the appellant advanced the loan of Rs.1,00,000/- does not find a place. But in the evidence he stated that it was on 01.10.2011. It is not known how he could mention the date in the evidence. The statements in the complaint indicate that the cheque was issued when the amount was allegedly borrowed on 01.10.2011. But in the cross-examination the appellant

(PW1) stated that the date on which the cheque was issued is 05.10.2011. The pleadings and the evidence are at variance. The observation made by the learned Magistrate in this regard appears to be justified.

4. Ext.P1 cheque is a type written one. The appellant's version is that the first respondent brought to him a type written cheque and signed it in his presence. This is unbelievable. This is a clever way of shifting the burden to the accused to prove non-execution of the cheque.

5. In the cross-examination, questions were put to PW1 as to his financial capacity to pay the amount. Deliberately he did not mention his income.

The above circumstances were sufficient to hold that the appellant's case is doubtful. The facts brought out in the cross examination of PW1 indicate that the defence version that Ext.P1 was a signed blank cheque is true. There is no merit in the appeal.

In the result, this appeal is dismissed.

Sd/-

K. ABRAHAM MATHEW, JUDGE

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P.A. to Judge

smv