

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

Crl.L.P.No. 389 of 2014 ()

**AGAINST THE JUDGMENT IN CRA 514/2013 OF ADDITIONAL DISTRICT AND SESSIONS
JUDGE, ERNAKULAM (FOR THE TRIAL OF CASES RELATING TO ATROCITIES &
SEXUAL VIOLENCE AGAINST WOMEN & CHILDREN) DATED 12-08-2014**

**AGAINST THE JUDGMENT IN CC 182/2010 OF JUDICIAL FIRST CLASS
MAGISTRATE- VI, ERNAKULAM DATED 30-09-2013**

PETITIONER/COMPLAINANT:

**P.K.XAVIER, S/O.KURIAN
PATHAPPILLY HOUSE, CHALIKKAVATTOM
ERNAKULAM DISTRICT PIN-682 024.**

**BY ADVS.SRI.K.V.JAYADEEP MENON
SRI.T.PRAMESH (THENGUMPILLIL)
SMT.P.KRISHNAPRIYA**

RESPONDENTS/ACCUSED:

**1. SMITHA JOSE, W/O.JOSE JOSEPH
ALUNKAL HOUSE, VENNALA
NOW RESIDING AT C/O.ROSY GEORGE MADAVANA HOUSE
MANJUMMEL P.O, KOCHI-683 501**

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

R2 BY PUBLIC PROSECUTOR SMT. REMA R.

**THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION
ON 16-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S ANNEXURES

ANNEXURE I. COPY OF THE JUDGMENT DATED 12TH AUGUST 2014 IN CRIMINAL APPEAL NO.514/2013 ON THE FILE OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE (FOR THE TRIAL OF CASES RELATING TO ATROCITIES & SEXUAL VIOLENCE AGAINST WOMEN AND CHILDREN), ERNAKULAM

ANNEXURE 2 COPY OF THE JUDGMENT DATED 30TH SEPTEMBER 2013 IN C.C.NO.182/2013 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-VI, ERNAKULAM

RESPONDENTS' ANNEXURES

NIL

//True copy//

P.A. TO JUDGE

Shg/

K. ABRAHAM MATHEW, J.

Crl.L.P.No.389 of 2014

Dated this the 16th day of January, 2015

O R D E R

The petitioner filed a complaint before the Judicial Magistrate of First Class-VI, Ernakulam alleging commission of the offence under Section 138 of N.I. Act by the first respondent. The accusation was that the first respondent borrowed Rs.98,000/- from the petitioner and in discharge of the liability issued a cheque bearing the date 19.12.2005 for the said amount. The cheque was returned dishonoured for want of sufficient fund in the account. In spite of demand by notice the first respondent failed to pay the amount. The learned Magistrate found her guilty and convicted her. In Criminal Appeal No.514/2013 the learned Sessions Judge took the view that the petitioner's case cannot be believed and accordingly, he allowed the appeal and acquitted the first respondent. The petitioner seeks leave to file appeal.

2. Heard the learned counsel for the petitioner.

3. The allegation in the complaint is that the first respondent borrowed Rs.98,000/- and in discharge of the liability, she issued Ext.P1 cheque bearing date 19.12.2005. Neither in Ext.P4 lawyer notice nor in the complaint nor in the evidence the petitioner disclosed the date on which the first respondent allegedly borrowed the amount or issued the cheque. As observed by the Supreme Court in **Vijay v. Laxman & Anr. [(2013) 3 SCC 86]** this itself makes the petitioner's case an unbelievable one.

4. The defence is that the petitioner is a money lender and the first respondent's husband borrowed from him a certain amount and he handed over to the petitioner the first respondent's signed blank cheque as a security and it was misused by him.

5. The petitioner does not claim to have witnessed execution of the cheque. His version is that the first respondent handed over to him Ext.P1 cheque. This is quite unnatural. His attempt is to shift the burden of proving non-execution of cheque to the accused.

6. The first respondent is a lady, who was aged 36 years at the relevant time. The petitioner is a plumber by occupation. It is difficult to believe that he could advance a loan of Rs.98,000/- free of interest. He has not disclosed the source of his income to pay such an amount.

7. All the above circumstances make the petitioner's case an improbable one. So even if it is assumed that he has proved execution of the cheque and there is a presumption under Section 139 of N.I. Act, it stands rebutted as observed by the Supreme Court in **M.S. Narayana Menon v. State of Kerala [AIR 2006 S.C. 3366]** and **K. Subramani v. K. Damodara Naidu [(2015) 1 SCC 99]**. The learned Sessions Judge was fully justified in acquitting the first respondent. This is not a fit case to grant leave.

In the result, this petition is dismissed.

Sd/-
K. ABRAHAM MATHEW
JUDGE
//True copy//
P.A. TO JUDGE

shg/