IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

Crl.L.P..No. 402 of 2014 ()

AGAINST THE JUDGMENT IN CC 779/2011 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II,THRISSUR DATED 11-07-2014

PETITIONER/COMPLAINANT:

DEEPAK P.G, AGED 35 YEARS,
S/O.POTTEKKAN GANGADHARAN, KARUVANKULAM DESOM
THANNIYAM VILLAGE, THRISSUR DISTRICT.

BY ADVS.SRI.M.H.HANIL KUMAR
SRI.A.P.VASAVAN
SRI.M.R.DHANIL

RESPONDENTS/COMPLAINANT & STATE:
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1. HUSSAIN
S/O.KANNANKILATH KUNJUMON, KUTTAMANGALAM DESOM
EDATHURUTHY VILLAGE, THRISSUR DISTRICT - 680 307.

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

R2 BY PUBLIC PROSECUTOR SMT. R. REMA

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 13-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

shg/

K. ABRAHAM MATHEW, J.

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Crl.L.P.No.402 of 2014

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Dated this the 13th day of January, 2015

<u>O R D E R</u>

The petitioner filed a complaint before the learned Magistrate concerned alleging that the first respondent accused issued a cheque in his favour for an amount of Rs.10 lakhs which was due to him, it was dishonoured by the bank for want of sufficient fund in the account, in spite of notice he failed to pay the amount and he thus committed the offence under Section 138 of N.I. Act. The learned Magistrate found that the petitioner's case is unbelievable and that is sufficient to rebut the presumption, if any, under Section 139 of N.I. Act and accordingly, he acquitted the first respondent. The petitioner seeks leave of this court for filing appeal.

2. Heard.

3. The version of the petitioner was that the respondent brought to him a written up cheque and signed it in his presence. This itself is quite unnatural. In fact he

wanted to shift the burden to the first respondent to prove execution of the cheque.

4. The amount involved is Rs.10 lakhs. The petitioner was aged 35 years at the relevant time. He is not an income tax payee. It is not known what was his source of income to advance a loan of Rs.10 lakhs.

5. Neither in the complaint nor in the evidence the petitioner disclosed the nature of the transaction, which reveals that his complaint has no bonafides. Reliance may be placed on the decision of the Supreme Court in **Vijay v. Laxman & Anr. [(2013) 3 SCC 86]**.

6. According to the petitioner, the period of loan was three months. But there was no agreement for payment of interest, which also is quite unbelievable. The petitioner deposed that he had maintained accounts with five banks; but admittedly, he did not have sufficient fund in any of the accounts to advance the loan.

7. All the above facts taken together are sufficient to rebut the presumption, if any, under Section 139 of N.I. Act

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 learned Magistrate was right in acquitting the accused. This is not a fit case to grant leave to file appeal.

In the result, this petition is dismissed.

Sd/-
K. ABRAHAM MATHEW
JUDGE

//True copy//

P.A. TO JUDGE

shg/