IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

Crl.L.P..No. 450 of 2014 ()

AGAINST THE JUDGMENT IN CC 1138/2013 OF JUDICIAL FIRST CLASS MAGISTRATE-II, MAVELIKARA DATED 06-08-2014

PETITIONER/COMPLAINANT:

PRASANNAN, AGED 45 YEARS
S/O.KARUNAKARAN, “SREEVALSOM”, EDAKKUNNAM MURI
NOORANADU VILLAGE FROM KANNAMKOMATHU VEEDU
KADUVINAL MURI, VALLIKKUNNAM VILLAGE, MAVELIKKARA TALUK

BY ADVS.SRI.D.SAJEEV (KAMBISSARI)
SRI.P.BIJIMON

RESPONDENTS/STATE/ACCUSED:
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1. STATE OF KERALA
   REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
   ERNAKULAM 682 031

2. THOMAS, AGED 45 YEARS
   S/O.MATHEW KURUVILA, N N NIVAS, MULAVANA MURI
   MULAVANA VILLAGE, KOLLAM DISTRICT 691 503

R1 BY PUBLIC PROSECUTOR SMT. REMA R.

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 15-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

shg/

K. ABRAHAM MATHEW, J.

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Crl.L.P.No.450 of 2014

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Dated this the 15th day of January, 2015

O R D E R

This proceedings arises from the order of acquittal passed by the learned Judicial First Class Magistrate-II, Mavelikara. The petitioner was the complainant in C.C.No.1138/2013. He alleged that on 18.11.2011 the second respondent borrowed from him Rs.12 lakhs and issued Ext.P1 cheque in discharge of the liability 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 he thus committed the offence under Section 138 of N.I. Act. The learned Magistrate found that the petitioner failed to prove execution and issuance of Ext.P1 cheque and the presumption, if any, under Section 139 of N.I. Act stood rebutted by the improbabilities in the case, and accordingly, she acquitted the second respondent. The petitioner seeks leave to file appeal.

2. Heard the learned counsel for the petitioner. The

petitioner's allegation that on 18.11.2011 the second respondent borrowed from him Rs.12 lakhs and in discharge of the liability he issued Ext.P1 cheque is denied by the latter. His version is that one of his relatives by name Alex took away a signed blank cheque from him and handed it over to the petitioner and the petitioner made entries in it and presented it before the bank.

3. The petitioner was examined as PW1. PW2 is a relative of him who claimed that he maintained the accounts of the petitioner. Both of them deposed that on 18.11.2011 the second respondent borrowed from PW1 (the petitioner) Rs.12 lakhs and handed over Ext.P1 cheque bearing the date 18.11.2011. Both of them would say that the second respondent brought a written up cheque. They claimed to have seen the second respondent put the signature in Ext.P1. It is unnatural that the second respondent would go to the petitioner with a written up cheque and would sign it before him. In the cross-examination it was suggested to PW1 that the entries in the cheque other than the signature

were in different inks and that they are in the handwriting of his relative Sabu. He just pleaded ignorance. It is clear that the petitioner wanted to shirk off the liability to prove execution of the cheque in an attempt and wanted the latter to prove that he did not execute the cheque.

4. In the cross-examination, PW1 deposed that he did not enquire about the assets of the second respondent. It is quite unbelievable that he would advance a loan of Rs.12 lakhs without ascertaining the capacity of the borrower to repay the amount. There is no dispute that the second respondent is an employee of the Forest Department. But it is quite clear that his income from the salary would not have been sufficient to repay even a small portion of the amount in a reasonable time. PW1 did not even know the purpose for which the second respondent allegedly borrowed the amount. He would say that he was told that it was to purchase a property. This is also a suspicious circumstance. Yet another suspicious circumstance is that the huge amount of Rs.12 lakhs was

advanced as loan free of interest.

5. PW1 testified that he used to keep upto Rs.20 lakhs with him for the purpose of his business and it was out of it he paid the amount to the second respondent. But there is no document to prove that he had the amount with him. It is pertinent to note that the evidence of his Accountant PW2 is that he did not have the amount of Rs.12 lakhs with him; there was a shortage of Rs.2 lakhs, it was PW2 who brought him Rs.2 lakhs.

6. It came out in the evidence of PW1 that he had filed five or six cases in respect of the very same transaction alleged in the petition. Moreover, he had filed one case against Alex, who is said to be a relative of the second respondent. That apart he had filed a case against the wife of Alex also. In each of these two cases the amount involved was Rs.12 lakhs. It also dropped in the cross-examination of PW1 that apart from the above cases he had filed 3 or 4 cases against some strangers also. So if what PW1 deposed is true he advanced at least about Rs.50 lakhs as loan to

various persons. At the same time he claims that he is not a money lender, which is not at all believable.

7. The facts and circumstances discussed above 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 petitioner does not have a believable case. The truth of the defence version need not be looked into. What the petitioner has failed to prove need not be disproved by the second respondent. The learned Magistrate rightly found that the petitioner failed to prove his case. There is no reason to interfere with the order of acquittal. The petitioner cannot be granted leave to file appeal.

In the result, this petition is dismissed.

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

shg/