

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.L.P.No. 459 of 2014 ()

**AGAINST THE JUDGMENT IN ST 71/2012 OF CHIEF JUDICIAL MAGISTRATE,
THALASSERY DATED 11-11-2014**

PETITIONER/COMPLAINANT:

**M.JINESH, AGED 43 YEARS
S/O. PAVITHRAN, "PAVITHRAM", CHIRAKKAL P.O.
KANNUR.**

**BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.K.ASHIS**

RESPONDENTS/ACCUSED :

- 1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.**
- 2. PRAJINESH
MAHATMA PRINTERS, NEAR GOVT.HIGH SCHOOL, P.O.FEROKE
PIN-676 001.**

R1 BY PUBLIC PROSECUTOR SRI. GITHESH R.

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

shg/

K. ABRAHAM MATHEW, J.

Crl.L.P.No.459 of 2014

Dated this the 20th day of January, 2015

O R D E R

The petitioner filed a complaint in the court of the learned Magistrate concerned alleging that the second respondent borrowed from him Rs.6 lakhs and issued a cheque bearing the date 1.6.2012 and the cheque was returned dishonoured for want of sufficient fund in the account and in spite of demand by notice he did not make the payment and he thus committed the offence under Section 138 of N.I. Act. After the trial the learned Magistrate found his case unbelievable and acquitted the second respondent. The petitioner seeks leave to file appeal.

2. Heard the learned counsel for the petitioner.

3. In the complaint, the date on which the amount was lent is not at all mentioned nor the date on which the cheque was issued.

4. In the complaint the petitioner's case is that he was running a school and he knew the accused because the

latter used to supply materials to the school. In the evidence he has no case that he was running a school. He would say that he was only manager of a school. The definite case of the second respondent is that he was working as a supplier in a hotel and he had no acquaintance with the petitioner. The second respondent who was examined as DW1 stated in the examination chief that he was only a supplier in a hotel. This was not challenged in the cross-examination. There was not even a suggestion in the cross-examination that the second respondent used to supply any materials to the school in which the petitioner was allegedly working as manager. It is true that DW1 admitted that his father had a printing press. That does not mean that the second respondent had any interest in the press. So, that alone will not make probable the petitioner's case.

5. If the evidence of the petitioner (PW1) is true his monthly salary was Rs.15,000/-. His admission shows that after meeting his expenses he had only about Rs.5,000/- with him every month. He did not have the income to pay

income tax. It is very difficult to believe that he had Rs.6 lakhs with him to lend to the second respondent free of interest and without taking any document as evidence.

6. As held by the Supreme Court in **K. Subramani v. K. Damodara Naidu [(2015) 1 SCC 99]** the fact that the petitioner had no income to advance a loan of Rs.6 lakhs alone was sufficient to pass an order of acquittal. But in this case in addition to the above fact there are many improbabilities which as held by the Supreme Court in **Kundan Lal Rallaram v. Custodian, Evacuee Property, Bombay [AIR 1961 SC 1316]** and **M.S. Narayana Menon v. State of Kerala [AIR 2006 S.C. 3366]** are sufficient to rebut the presumption, if any, under Section 139 of N.I. Act. There is nothing wrong in the order passed by the learned Magistrate. 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/