

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. 469 of 2014 ()

CC 30/2011 of C.J.M., ALAPPUZHA DATED 25-09-2013

PETITIONER/COMPLAINANT:

VARGHESE P DOMINIC, AGED 51 YEARS
S/O.VARGHESE, PALACKAL HOUSE, KAINAKARY P.O.
ALAPPUZHA.

BY ADVS.SRI.SOORAJ T.ELENJICKAL
SRI.P.A.MOHAMMED SHAH
SRI.B.PRASANTH
SRI.T.S.SARATH
SMT.P.M.MAZNA MANSOOR

RESPONDENTS/ACCUSED AND STATE:

1. KUNJAPPAN
S/O.MAMMAN, KOTTASSERY VEEDU, PANTHEZHAM JUNCTION
MUHAMMA P.O., ALAPPUZHA.

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

BY PUBLIC PROSECUTOR SMT. REMA. R.

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON
15-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

smv

K. ABRAHAM MATHEW,J.

Crl.L.P. No.469 of 2014

Dated this the 15th day of January, 2015

O R D E R

Petitioner is the complainant in CC No.30 of 2011 on the file of the Chief Judicial Magistrate, Alappuzha. He filed a complaint on the allegation that he advanced a loan of Rs.55,000/- to the first respondent, who issued a cheque for the amount bearing date 10.11.2010 and it was returned dishonoured for want of sufficient fund and in spite of demand by notice, he failed to pay the amount and he thus committed the offence under Section 138 of the Negotiable Instruments Act. The learned Chief Judicial Magistrate found that the improbabilities brought out in the evidence made the petitioner's case unbelievable and accordingly, he acquitted the first respondent. The petitioner seeks leave to file appeal.

2. Heard the learned counsel for the petitioner.

3. Ext.P1 cheque is dated 10.11.2010. The defence version is that the first respondent had borrowed Rs.11,000/- about 9 years ago and Ext.P1 was the signed blank cheque leaf he had entrusted to the petitioner as a security for its repayment. He who was examined as DW1 repeated his version in the box also.

4. It is an admitted fact that all the entries in Ext.P1 cheque and

the signature in it are in different inks. The petitioner does not claim to have seen the first respondent making the entries. His version is that it was a written up cheque the first respondent brought to him when he came to borrow the money. This is quite unbelievable. The testimony of DW1 in the examination chief that what he handed over to the petitioner was a signed blank cheque stands unchallenged in the cross-examination. This alone is sufficient to hold that the petitioner's case is false.

5. The date of borrowing or the date on which the cheque was issued does not find a place in the complaint or in the examination chief of the petitioner. Only in the cross-examination he disclosed that the date of borrowing was 10.11.2010. As observed by the Supreme Court in **Vijay v. Laxman and another** [(2013) 3 SCC 86] this indicates that the petitioner's case is not true. He is not a bona fide litigant.

6. It is also quite unbelievable that the petitioner would give Rs.55,000/- free of interest. Admittedly, the petitioner did not have money with him to advance the loan. In the cross-examination he stated that it was by pledging his ornaments, he raised the amount. Earlier he had deposed that it was the money he had kept with him for his agricultural purposes. But he did not remember when the ornaments were pledged or the quantity of the ornaments or the amount he received. He could not even say how long ago he pledged

them. This is yet another circumstance indicating that his case is unbelievable.

7. As held by the Supreme Court in **Kundan Lal Rallaram v. Custodian, Evacuee Property, Bombay** [AIR 1961 Supreme Court 1316] and **M.S. Narayana Menon @ Mani v. State of Kerala & another** [AIR 2006 Supreme Court 3366] all the improbabilities put together rebut the presumption, if any, under Section 139 of the N.I. Act. The Chief Judicial Magistrate was fully justified in passing the order of acquittal. It is not at all proper to grant leave to file appeal.

In the result, this petition is dismissed.

Sd/-
K. ABRAHAM MATHEW, JUDGE

//true copy//

P.A. to Judge

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