

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW**

**TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 1936**

**Crl.L.P.No. 477 of 2014 ()**  
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**AGAINST THE JUDGMENT IN CC 676/2013 OF JUDICIAL FIRST CLASS MAGISTRATE  
COURT-II, PALAKKAD DATED 11-11-2014**

**PETITIONER/COMPLAINANT:**  
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**K.A.BALAKRISHNAN, AGED 60 YEARS  
S/O. APPU, KUNNATHU VEEDU, KONGAD POST  
PALAKKAD DISTRICT.**

**BY ADVS.SRI.SAJAN VARGHEESE K.  
SRI.LIJU. M.P**

**RESPONDENTS/ACCUSED AND NON-PARTY:**  
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**1. RAMANI  
W/O. VISWANADHAN, PALATTU PARAMBU VEEDU  
MANIKKASSERRY POST, KONGAD  
PALAKKAD TALUK AND DISTRICT 678 502.**

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

**R2 BY PUBLIC PROSECUTOR SMT. REMA R.**

**THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON  
06-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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**K. ABRAHAM MATHEW, J.**

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**Crl.L.P.No.477 of 2014**  
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**Dated this the 6<sup>th</sup> day of January, 2015**

**O R D E R**

The petitioner was the complainant in C.C.No. 676/2013 on the file of the Judicial First Class Magistrate Court-II, Plalakkad. His allegation was that the first respondent and her husband borrowed from him Rs.68,950/- on different occasions and repaid only Rs.8,950/-and for the balance amount of Rs.60,000/- the first respondent issued a cheque on 29.11.2012 and the cheque was dishonoured for want of sufficient fund in her account and she failed to pay the amount in spite of demand by notice and she has thus committed the offence under Section 138 of N.I. Act. The learned Magistrate found that the petitioner's case is false and acquitted the first respondent. The petitioner wants leave to file appeal against the order of acquittal.

2. Heard the learned counsel for the petitioner.

3. The defence version is that the accused has not borrowed money from the complainant. The case of the

accused is that he gave the complainant a blank signed cheque for granting a loan from the society in which the complainant was the Secretary of the society.

4. The petitioner allegedly paid different amounts during the period between 16.11.2011 and 09.08.2012. The total amount is Rs.68,950/-; the first respondent and her husband repaid only Rs.8,950/- and for the balance amount she allegedly issued Ext.P1 cheque; it was dishonoured for want of sufficient fund in the account; though the petitioner demanded the amount by Ext.P3 notice, there was no response on the part of the first respondent.

5. In the cross-examination the complainant, who was examined as PW1, stated that the amounts were paid on 13 occasions and all the payments were made by cheques drawn on SBI, Kongad branch. Ext.X1 is copy of his bank account. It shows that the total amount paid by him was only Rs.27,200/-. Faced with this situation he filed an application to reopen the evidence for his examination again. Unfortunately, the learned Magistrate allowed it. In the further examination he deposed that all the payments

were not paid by cheques and that some were cash payments. He should not have been allowed to depose to this fact. Neither in the examination chief, nor in the cross-examination PW1 had a case that he had maintained an account. But in his further examination he produced a handbook, which was marked as Ext.P5. The learned Magistrate again went wrong in admitting it in evidence. No amount of evidence given in the further examination of PW1 will take away the effect of the statements made by him in his first examination. His own accounts disproves his case that he paid Rs.68,950/- to the first respondent. This was one of the grounds on which the learned Magistrate found the first respondent not guilty.

6. In the proof affidavit filed in lieu of the examination in chief the complainant (PW1) specifically stated that the first respondent filled up the cheque and signed it before it was issued. But in the cross-examination he has a different case. He would say that the first respondent brought a written up cheque and she only signed it before him. It is unbelievable that the first

respondent would bring a written up cheque without her signature in it. It is not in dispute that the entries in the cheque and the signature in it are in different inks. This also indicates that all is not well with the petitioner's case.

7. As laid down by the Supreme Court in **M.S. Narayana Menon v. State of Kerala [AIR 2006 S.C. 3366]** even probability is sufficient to rebut the presumption under Section 139 of N.I. Act. The presumption would arise only if there is admission or proof of execution of the cheque. In this case even execution of the cheque is not satisfactorily proved. Even if it is assumed that its execution is proved, the probabilities are sufficient to rebut the presumption. The trial court was fully justified 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

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