IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

CRL.A.No. 2126 of 2011 ( )

AGAINST THE ORDER/JUDGMENT IN Crl.L.P. 999/2011 of HIGH COURT OF KERALA DATED 11-11-2011

AGAINST THE JUDGMENT IN Crl.A 475/2009 of ADDITIONAL SESSIONS COURT, AD HOC III, PALAKKAD DATED 06-10-2010

APPELLANT/2ND RESPONDENT/COMPLAINANT:

FATHIMA SUHRA,D/O.V.K.UMMER,RESIDING AT
VERLIKKATTIL VEETTIL, KULUKKALLUR, OTTAPALAM
PALAKKAD 679 337.

BY ADVS.SRI.T.C.SURESH MENON
SRI.JIBU P THOMAS
SRI.P.S.APPU
SRI.A.R.NIMOD
SRI.C.A.ANOOP
SRI.MATHEWS RAJU

RESPONDENTS/1ST RESPONDENT/APPELLANT/NOT PARTY/ACCUSED:
----

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

2. MOHANDAS,S/O.KUNHUNNI NAIR,RESIDING AT
THEKKILATH VEEDU, KULUKKALLUR P.O, OTTAPALAM
PALAKKAD 679 337.

R1 BY PUBLIC PROSECUTOR SRI. GITHESH R.
R2 BY ADV. SMT.A.P.LALY @ LALY VINCENT

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SHG

K. ABRAHAM MATHEW, J.

- -

Crl.A. No.2126 of 2011

- -

Dated this the 2nd day of February, 2015

J U D G M E N T

The complainant in S.T. 126/2008 on the file of the Judicial First Class Magistrate Court-II Ottapalam is the appellant. The second respondent is the accused. The trial court found the second respondent guilty of the offence under Section 138 of the N.I. Act. In Crl.A.No.475/2009 the Sessions Court reversed the finding and acquitted him. This order of acquittal is challenged in this appeal.

2. In the complaint the allegation was that the second respondent had owed the appellant a certain amount and to discharge that liability he issued her a cheque bearing date 3.10.2005 for Rs.1 lakh and it was returned dishonoured for want of sufficient fund in his account and in spite of demand by notice he failed to pay the amount and thus committed the offence under Section 138 of the N.I. Act.

3. Heard the learned counsel for the appellant.

4. In the complaint the nature of transaction between the appellant and the second respondent was not disclosed. Even in the examination-in-chief it was not disclosed. But in the cross-examination the appellant, who was examined as PW1, revealed that it was a loan transaction. The date on which the amount was borrowed or Ext.P1 cheque was issued does not find a place either in the complaint or in the examination-in-chief. In the cross-examination, PW1 disclosed that the transaction was on 16th or 17th of February, 2005 and Ext.P1 cheque was issued on 3.10.2005. As observed by the Supreme Court in **Vijay v. Laxman & Anr. [(2013) 3 SCC 86]** these facts make the appellant's case a doubtful one.

5. The defence version is that one Haridas, a friend of the second respondent, borrowed Rs.25,000/- from the appellant and as he had no bank account the appellant insisted on getting a signed blank cheque from someone else and at the request of Haridas the second respondent gave her a signed blank cheque, which is Ext.P1.

6. Haridas was examined as DW1. It was deposed by him that to meet the expenses of the treatment of his mother, in December 2003, he borrowed Rs.25,000/- from the appellant agreeing to repay the amount in ten monthly installments of Rs.3,500/- and as a security he gave her Ext.P1 signed blank cheque. He could pay the amount only for seven months. In the cross-examination it was not even suggested to him that no such transaction had taken place between him and the appellant. Nothing was brought out in his cross-examination to show that his evidence is false. The court is compelled to accept his evidence in toto. The appellate court rightly relied on his evidence to find the second respondent not guilty.

7. A perusal of Ext.P1 cheque shows that the entries in it except the signature are in a different ink. This makes probable the defence version that when it was handed over to the appellant it contained only the second respondent's signature.

8. The appellant (PW1) does not claim to have seen

the second respondent executing the cheque. Her version is that the second respondent brought to her a written up cheque and signed it in her presence. She did not know who filled up the cheque. This also indicates that Ext.P1 was a signed blank cheque.

9. Going by the statements of the appellant (PW1) in the cross-examination the loan was given in the third week of February 2005. The cheque was issued about eight months later. The appellant did not obtain any evidence to prove the transaction. There was no agreement to pay interest. This is unbelievable.

10. Admittedly the appellant had no source of income to advance a loan of Rs.1 lakh. She got Rs.60,000/- from her husband and the remaining Rs.40,000/- was the amount she obtained from a chitty transaction. Except her interested testimony there is nothing to prove it. It is also relevant that the appellant did not know whether the second respondent had the capacity to repay the amount.

11. In the cross-examination PW1 stated that Ext.P1 cheque was issued in her favour because her husband was not there in her house. It is true that immediately she added that the cheque was issued in her favour because the loan was advanced by her.

12. The totality of the facts and circumstances mentioned above leave no room for doubt that the appellant's case is false. The learned Sessions Judge was fully justified in passing an order of acquittal. There is no merit in the appeal.

In the result, this appeal is dismissed.

Sd/-

K. ABRAHAM MATHEW
JUDGE

//True copy//

P.A. TO JUDGE

shg/