

## Antony Irumban Vs State of Kerala and K.P. Raphel

**Court:** High Court Of Kerala

**Date of Decision:** May 28, 2009

**Hon'ble Judges:** M.N. Krishnan, J

**Bench:** Single Bench

**Advocate:** K.S. Babu, for the Appellant; U.O. Jose, for the Respondent

### Judgement

M.N. Krishnan, J.

This appeal is preferred against the judgment in C.C.154/00. It was a case filed under the N.I. Act with the averment

that the accused had borrowed a sum of Rs. 1,25,000/- and towards the discharge of the liability the accused had issued cheque which when

presented on 7.9.1999 returned with the endorsement of insufficiency of funds and after issuing a statutory notice action has been initiated.

2. The defence appears to be that the accused had joined in a kuri conducted by Goodwill Hire Purchase Chit and Finance Ltd. and had bid the

kuri in auction and at the time of getting the amount had given a blank cheque as security which had been used by one of the Directors to file a case

of this nature. The Court below found that having borrowed the amount from a Co-operative Bank, under ordinary human conduct he should not

have advanced the amount and therefore believed the case set up by the accused and acquitted the accused. It is against that decision the present

appeal is preferred.

3. Heard the learned Counsel for the appellant and perused the records. It is the case of the complainant that the accused had borrowed a sum of

Rs. 1,25,000/- on 30.5.1999 and had issued a cheque on 7.6.1999 towards the discharge of the liability. When it was initially presented it was

returned for insufficiency of funds and at the instance of the accused it was again represented in the month of September then also it met with the

same fate. A notice was issued for which no reply was sent. The evidence in this matter is that of PW1 and DW1. PW1 had categorically asserted

that he had advanced the money and the source of advancing. He had this money by availing a loan from the Thrissur Urban Co-operative Bank

Ltd. It is true that it is averred that the availment of loan was in the month of November, 1998 and the advancement of the loan of this case was on

30.5.1999. So the Court below held that after taking a loan with a stipulation to pay interest nobody would have kept the amount with him and so

the case appears to be totally unbelievable. It has to be understood that in Ext.D6 notice even the accused would say that the complainant is a

Director of the chit company namely Goodwill Hire Purchase Chit and Finance Ltd. So it may not be correct to hold that the complainant did not

have any resources at all. One cannot visualize a situation where a person thinking that he will have to spend the money for the daughter's

marriage, keeps the money with him for some time. It has come out in evidence that the complainant had advanced loan to the accused on previous

occasions as well. It shows that they were not strangers. The Court has to consider whether there were materials to prove that at the relevant point

of time a chitty had been bid in auction and the person had executed any bond or any cheque. It cannot be simply accepted because the accused

says so in the 313 questioning or in his evidence. When a matter can be proved by documentary evidence and when the accused had chosen

himself to enter the box and produce some documents, the Court is certainly empowered to look into the aspect regarding the chit transaction

alleged to be stated by the accused. Therefore the Court has not properly weighed the evidence and so it is desirable that an opportunity is given

to the complainant in this case to adduce further evidence if he wants and if the accused wants he can also do the same and then the matter be

disposed of in accordance with law. Therefore the judgment under challenge is set aside and the matter is remitted back to the trial court for

consideration by permitting both the complainant and the accused to adduce evidence and produce documents and the Court thereafter to dispose

of the matter in accordance with law. Since the presence of the accused is absolutely necessary I direct the complainant to take out summons to

the accused afresh after the complainant enters appearance before the Court below on 6.7.2009.

The Crl.Appeal is disposed of as above.