IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

Crl.Rev.Pet.No. 355 of 2003 ( )

AGAINST THE JUDGMENT IN Crl.Appeal No. 67/1998 of ADDITIONAL SESSIONS JUDGE FAST TRACK COURT-I, PALAKKAD DATED 19.9.2002
AGAINST THE JUDGMENT IN ST 1171/1997 of J.M.F.C.,CHITTUR DATED 16-05-1998

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

JAYAPARVATHY, W/O.JAYASANKAR, RESIDING
AT KAITHAKUZHIYIL HOUSE, ERATTAKULAM POST, ELAPULLY
PALAKKAD DISTRICT.

BY ADVS.SRI.T.C.SURESH MENON
SRI.PRINCE.K.ELIAS
SMT.P.K.RADHIKA

RESPONDENT(S)/RESPONDENTS NOT PARTY/COMPLAINANT:

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

2. M.CHANDRAN, S/O.MURUGAN, RESIDING AT SOUDHAMBIKA JUNCTION, CHITTUR POST, PALAKKAD DISTRICT.

R1- BY PUBLIC PROSECUTOR SRI. N. SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

acd

P.D. RAJAN, J.

Crl. R.P.No.355 of 2003

Dated this the 25th day of September, 2015

ORDER

Revision petitioner, who is the appellant in Crl.Appeal No.67/1998 on the file of Addl. Sessions Fast Track Court-I, Palakkad, challenges the concurrent finding of conviction u/s.138 of the Negotiable Instruments Act (hereinafter referred to as the N.I. Act). She was accused in S.T. No.1171/1997 of Judicial First Class Magistrate Court, Chittur and convicted u/s.138 of the N.I. Act and sentenced to simple imprisonment for two months and to pay a fine of ₹5,000/-, in default of payment of fine, simple imprisonment for a further period of one month, which was confirmed by the appellate Court. The complainant in the trial Court is the

2nd respondent in this revision petition.

2. The complainant's case in the trial Court was that the accused borrowed a sum of ₹35,000/- from him and in discharge of that debt, she issued a cheque drawn on Dhanalakshmi Bank, Palakkad branch. When that cheque was presented for encashment, it was dishonoured for the reason of funds insufficient. The 2nd respondent/ complainant demanded the due amount by giving a notice in writing to the accused. Even after receipt of notice, there was no repayment from the side of the revision petitioner. In the circumstances, the above complaint was filed in the trial Court.

3. During trial, the complainant was examined as PW1 and the Bank Manager was examined as PW2. Exts.P1 to P5 were marked as documentary evidence. The incriminating circumstances brought out in evidence were

denied by the accused while questioning her. She did not adduce any defence evidence. After anlysing the evidence on record, the trial Court convicted the revision petitioner.

4. When the matter came up for hearing, the learned counsel appearing for the revision petitioner contended that the cheque was issued in connection with the transaction between the husband of the accused and another in her presence. The learned counsel submitted that the sentence imposed by the trial Court, which was upheld by the appellate Curt, is too harsh and therefore,he prays to modify the sentence.

5. According to Section 138 of the N.I. Act, where any cheque drawn by a person on an account maintained by him with a bank for payment of any amount of money to another person from out of that account, for the discharge in whole or in part of any debt or liability, is

returned by the bank, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with a bank, such person shall be deemed to have committed an offence under Section 138 of the Negotiable Instruments Act. This deemed provision is subject to the statutory condition that the cheque has to be presented within the statutory period in which it is drawn or within the period of its validity. Secondly, the payee or holder in due course of the cheque makes a demand for payment of such amount by giving a notice in writing to the drawer of the cheque and non-payment of due amount after receipt of notice by the drawer of the cheque.

6. To prove the allegation, the 2nd respondent was

examined as PW1 in the trial Court. Ext.P1 is the cheque. Ext.P2 is the dishonour memo. Ext.P3 series are the lawyer notice, postal receipt and acknowledgment card. Ext.P4 is the reply notice. Ext.P5 is the extract of the ledger. PW2 deposed that when Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient. When the cheque is dishonoured for the reason of funds insufficient, a presumption u/s.139 of the N.I. Act can be drawn in favour of the holder of the cheque. The principle drawing presumptions has been explained by the Apex Court in **Beena** v. **Muniappan** (AIR 2001 SC 2995). The trial Court and the Appellate Court appreciated that legal position and convicted the revision petitioner. I do not find any illegality in the conviction passed by the trial Court. The trial Court sentenced the revision petitioner to imprisonment for two months and to pay fine of ₹5,000/-, which needs interference. Therefore, I modify the sentence as follows:

The revision petitioner is sentenced to imprisonment till rising of the Court and to pay compensation of ₹35,000/- , in default of payment of compensation, simple imprisonment for two months. The revision petitioner is directed to surrender before Judicial First Class Magistrate Court, Chittur within thirty days from today, for receiving modified sentence, failing which, the Judicial First Class Magistrate, Chittur shall issue Non Bailable Warrant against the revision petitioner.

The revision petition is disposed of as above.

P.D. RAJAN, JUDGE.

acd