IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

Crl.Rev.Pet.No. 1261 of 2003 ( )

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 14/1994 of ADDITIONAL DISTRICT & SESSIONS (ADHOC), COURT-I, PATHANAMTHITTA DATED 31.10.2002
AGAINST THE JUDGMENT IN ST 245/1992 of J.M.F.C.,RANNI
DATED 22.01.1994

REVISION PETITIONER(S/APPELLANT/ACCUSED:

P.P. RAJAN, PERUMPOIKAYIL HOUSE,
EDAMURY, CHETHACKAL, RANNY.

BY ADV. SRI.S.SANTOSH KUMAR (PERUNAD)

RESPONDENT(S/RESPONDENT/COMPLAINANT & STATE:

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1. P.M. GEORGE,
PARUVANETHU HOUSE,
KUMPLATHAMON,
VADASSERIKKARA.

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

R2, BY PUBLIC PROSECUTOR SRI. N. SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.1261 of 2003

Dated this the 6th day of October, 2015

ORDER

The revision petitioner, who is the appellant in Crl.Appeal No.14/1994 of Additional District and Sessions Judge (Adhoc) Court-I, Pathanamthitta, challenges the conviction u/s.138 of the Negotiable Instruments Act (hereinafter referred to as the N.I. Act). He was the accused in S.T.No.245/1992 of Judicial Magistrate of First Class, Ranny, u/s.138 of the N.I. Act and convicted and sentenced to imprisonment for one year and to pay fine of ₹ 5,000/-, in default of payment of fine, simple imprisonment for two months. He was also directed to pay the entire cheque amount as compensation. The complainant is the 1st respondent in this revision petition.

2. The complainant's case in the trial Court was that the accused borrowed a sum of ₹44,000/- from him and in discharge of that debt, he issued a cheque drawn on Federal Bank, Ranni. When the cheque was presented for encashment, it was dishonoured for the reason of funds insufficient. The complainant demanded the due amount by giving a notice in writing. Even after receipt of notice, there was no repayment. In the circumstances, a complaint was filed in the trial Court.

3. To prove the offence, the complainant was examined as PW1. The other two witnesses were examined as PW2 and PW3 and marked Exts.P1 to P7. The incriminating circumstances brought out in evidence were denied by the accused, while questioning him. He examined

DW1 and DW2 in support of his defence. After anlaysing the evidence, the trial Court convicted him. Against that, he preferred the above appeal, in which the conviction was confirmed and the sentence was modified. The accused was directed to pay compensation of ₹44,000/-. Being aggrieved by that, he preferred this revision petition.

4. The revision petitioner in his petition contended that the judgments of the Courts below are illegal and irregular, which is against the law and facts of the case. He further contended that the complainant had failed to comply with the statutory requirements u/s.138 of the N.I. Act. Moreover, he failed to issue statutory notice u/s.138 of the N.I. Act and Ext.P1 is fabricated one and that the revision petitioner was falsely implicated in the case and the rebuttal evidence of DW1 and DW2 was not considered

by the Courts below.

5. The revisional jurisdiction is supervisory jurisdiction to find out the illegality, irregularity in the order or sentence or proceedings of the Court below. The object of conferring revisional power is to clothe the High Court with a jurisdiction of the general supervision in order to correct grave miscarriage or failure of justice arising from erroneous or defective orders. While exercising this power, it is justified only to set right grave failure of justice and not merely to rectify every error.

6. 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.

7. To prove the allegation, the 1st respondent examined PW1 in the trial Court. His evidence shows that Ext.P1 was issued in discharge of a debt for ₹44,000/-. When Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient. Exts.P2 and P3 are the intimations and in Ext.P2, it is specifically mentioned that the cheque was dishonoured for the reason of funds insufficient. PW1 issued a lawyer notice to the accused. Ext.P4 is the postal receipts. Ext.P5 is the copy of notice. Ext.P6 is the copy of ledger. Ext.P7 is the copy of extract of cheque return register. A perusal of Ext.P7 shows that the cheque was dishonoured for the reason of funds insufficient. Exts.P4 and P5 show that the lawyer notice was issued as stated u/s.138 of the N.I. Act.

Analysing the evidence of PW1, it is clear that all the statutory formalities were properly complied. PW2 supported the evidence of PW1. PW3, the Bank Manager also supported that when Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient. When cheque is dishonoured for the reasons stated u/s.138 of the N.I. Act, a statutory presumption u/s.139 of the N.I. Act can be drawn in favour of the holder of the cheque. Therefore, I conclude that Ext.P1 was dishonoured for the reason of funds insufficient.

8. When complainant proves the existence of a legally enforceable debt, the presumption under Section 139 of the Negotiable Instruments Act starts operating and burden shifts to the accused. Section 139 reads as follows.

> "139. Presumption in favour of the holder - It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability".

The revision petitioner admitted his signature in Ext.P1. He contended that Ext.P1 was issued in a business transaction. He examined DW1 and DW2. Dw1 deposed that he knew the accused and the complainant and one bus belonged to the accused was purchased by the complainant and both of them conducted service jointly. In connection with that transaction, they have also exchanged blank cheques. When both parties failed to pay the instalments to the finance company, the vehicle was seized by the company and thus the complainant sustained loss. In such a situation, for compensating that loss, he misused one of the cheque leaves entrusted by the revision petitioner and foisted a false case. DW2 also admitted that he was also familiar to the complainant and the accused and he was the driver of the bus owned by the complainant. But, no documents were produced in the trial Court to prove the defence contention. In such a situation, the above evidence is not sufficient to rebut the presumption u/s.139 of the N.I. Act. It is the primary responsibility of the revision petitioner to rebut the presumption available u/s.139 of the N.I. Act. In the absence of such rebuttal evidence, the trial Court convicted the revision petitioner, which was upheld by the appellate Court. I do not find any illegality in the above judgment.

9. The appellate Court, while confirming the conviction, sentenced to pay compensation to the complainant u/s.357(3) Cr.P.C. I do not find any illegality in

the above judgment, but I modify the sentence as follows:

The revision petitioner is sentenced to imprisonment till rising of the Court and to pay compensation of 44,000/- to the 1st respondent. If compensation amount is realised, it shall be disbursed to the 1st respondent forthwith. The revision petitioner is directed to surrender in the Judicial Magistrate of First Class, Ranny, forthwith to undergo the modified sentence, failing which the learned Magistrate shall issue non bailable warrant against the revision petitioner.

Crl. Revision Petition is disposed of as above.

P.D. RAJAN, JUDGE.

acd