

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

Crl.Rev.Pet.No. 1820 of 2003 ()

AGAINST THE JUDGMENT IN Crl.APPEAL NO.597/2002 of IV ADDL.SESIONS
COURT,ERNAKULAM DATED 18-03-2003

AGAINST THE JUDGMENT IN CC 783/1999 of JUDL.M.F.C.-I,ERNAKULAM
DATED 30-07-2002

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

VARGHESE T.VARGHESE,
ST. LUKE'S HOSPITAL,
CHULLIKKAL, COCHIN- 682 005.

BY ADVS.SRI.PHILIP T.VARGHESE
SRI.N.SASI

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

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1. ST.MARY'S FINANCE LIMITED,
MULLASSERI CANAL ROAD, ERNAKULAM,
COCHIN-11, REPRESENTED BY ITS AUTHORISED
REPRESENTATIVE AND OFFICE MANAGER,
M.P. SUREDNDHAN.
 2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI. N. SURESH.

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

acd

P.D. RAJAN, J.

Crl. R.P.No.1820 of 2003

Dated this the 9th day of September, 2015

ORDER

The revision petitioner, who is the appellant in Crl.Appeal No.597/2002 on the file of IV Additional Sessions Court, Ernakulam, challenges the judgment of concurrent finding of conviction u/s.138 of the Negotiable Instruments Act (hereinafter referred to as N.I. Act). He was the accused in C.C.No.783/1999 of Judicial First Class Magistrate-I, Ernakulam, convicted and sentenced to imprisonment for six months and to pay fine of ₹5,000/-, in default of payment of fine, simple imprisonment for two months and it was directed to pay ₹3,000/- to the complainant from the fine amount of ₹5,000/- as

compensation. Against that, he preferred the above appeal, in which the sentence was modified and the revision petitioner was sentenced to undergo simple imprisonment for one month and to pay compensation of ₹1,75,000/- u/s.357(3) Cr.P.C., in default, simple imprisonment for two months. Being aggrieved by that, he preferred this revision petition.

2. The complainant's case in the trial Court was that the revision petitioner issued Ext.P2 cheque for ₹1,65,000/- in discharge of a liability. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. The complainant/1st respondent demanded the money by issuing a notice to the accused, even after receipt of that notice, there was no repayment by the revision petitioner. In the circumstances, the above complaint was filed in the Court

below.

3. During trial, the complainant was examined as PW1 and Exts.P1 to P7 were marked as documentary evidence. The incriminating circumstances brought out in evidence were denied by the accused, while questioning him. He did not adduce any defence evidence. The trial Court, after analysing the evidence, convicted the accused. Against that, he preferred the above appeal.

4. After filing this revision petition, this Court directed the revision petitioner to take steps to issue notice to the 1st respondent. Notice to the 1st respondent returned earlier stating that 'not working now'. In the circumstances, personal appearance of R1 is dispensed with. Hence, I heard the learned counsel appearing for the revision petitioner. The learned counsel submitted that a leniency may be shown in sentence and imprisonment may

be avoided.

5. The learned Public Prosecutor has no objection in modifying the sentence.

6. The revisional power is conferred 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 to rectify every error. The fact that the lower Court has taken a wrong view of law or misapprehended the evidence on record cannot be a reason to interfere unless it has resulted in grave injustice.

7. A close reading of Section 138 of the N.I. Act shows that, 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.

8. To prove the issuance of cheque, PW1 deposed that Ext.P2 cheque was issued in discharge of a debt. When Ext.P2 was presented for encashment, it was dishonoured for the reason of funds insufficient. Ext.P3 is the dishonour memo. Ext.P4 is the intimation. He demanded money by issuing a lawyer notice. Ext.P5 is the lawyer notice. Ext.P6 is the acknowledgment card. Ext.P7 is the extract from the account of revision petitioner.

Ext.P1 is the resolution taken by the 1st respondent. From the evidence of PW1, it is clear that Ext.P2 was dishonoured for the reason of funds insufficient. Therefore, a presumption u/s.139 of the N.I. Act can be drawn in favour of the holder of the cheque.

8. 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".

A three Judge bench of the Apex Court in Rangappa v. Sri

Mohan (2010(11) SCC 441) held as follows:-

"The presumption mandated by Section 139 includes a presumption and there exists a legally enforceable debt or liability. This is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the respondent complainant".

Therefore, in the present case, the cheque as well as the

signature has been accepted by the accused, the presumption under Section 139 would operate. Thus, the burden was on the accused to rebut the above presumption for which no evidence has been adduced by the revision petitioner. Therefore, I do not find any illegality in the judgment of the Courts below. However, I modify the sentence as follows:

10. The revision petitioner is sentenced to imprisonment till rising of Court and to pay sum of ₹1,65,000/- as compensation u/s.357(3) Cr.P.C., in default of payment of compensation, simple imprisonment for two months. The revision petitioner is directed to appear before trial court within 30 days from today, failing which, Judicial First Class Magistrate-I, Ernakulam shall issue Non-bailable Warrant against the accused. If any amount is deposited as directed above, it shall be disbursed to the

1st respondent.

The revision petition is disposed accordingly.

P.D. RAJAN, JUDGE.

acd

