

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

Crl.Rev.Pet.No. 611 of 2004 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO.184/2000 of ADDL.SESIONS
COURT (ADHOC-I), KASARAGOD DATED 02-01-2004

AGAINST THE JUDGMENT IN CC 244/1998 of CHIEF JUDICIAL
MAGISTRATE, KASARAGOD DATED 28-06-2000

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

N. MOIDU, S/O. ABDUL KHADER @ KHADERCHA,
NELLIKKATTA, P.O. NEKRAJE, KASARAGOD.

BY ADV. SRI.I.V.PRAMOD

RESPONDENT(S)/STATE & RESPONDENT/COMPLAINANT::

-
1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF, KERALA
ERNAKULAM.
 2. AMOO HAJI, S/O. LATE HASSANKUTTY,
RESIDING AT PADINJAR KIZHAKKEKARA HOUSE, P.O. UDMA
UDMA VILLAGE, KASARAGOD TALUK.

R1 BY PUBLIC PROSECUTOR SRI. N.SURESH
R2 BY ADV. SRI.SURESH KUMAR KODOTH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 29-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.611 of 2004

Dated this the 29th day of September, 2015

ORDER

The revision petitioner, who is the appellant in Crl. Appeal No.184/2000 on the file of Additional Sessions Judge (Adhoc-I), Kasaragod, challenges judgment of conviction u/s.138 of the Negotiable Instruments Act (hereinafter referred to as the N.I. Act). He was the accused in C.C.No.244/1998 of Chief Judicial Magistrate, Kasaragod for offence u/s.138 of the N.I. Act. He was convicted and sentenced to undergo simple imprisonment for three months u/s.138 of the N.I. Act and to pay compensation of ₹ 28,500/- u/s.357(3) Cr.P.C. Against that, the accused/revision petitioner preferred the above appeal,

which was dismissed. Being aggrieved by that, he approached this Court with this revision petition. The complainant is the 2nd respondent in this revision petition and he died during the pendency of the revision petition.

2. The complainant's case is that on 27.2.1998 the accused borrowed a sum of ₹27,500/- from him and in discharge of that debt, he issued Ext.P1 cheque. When it 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, but the accused failed to pay the amount. Hence, he filed the above complaint in the trial Court.

3. During trial, the complainant was examined as PW1 and his documents were marked as Exts.P1 to P5. The incriminating circumstances brought out in evidence were denied by him while questioning him. He did not adduce any

defence evidence. The trial Court, after analysing the evidence, convicted the accused, which was upheld by the Appellate Court.

4. The learned counsel for the revision petitioner submitted that the sentence imposed by the trial Court is too harsh. Such illegality can be rectified by invoking the revisional jurisdiction. After filing this revision petition, the 2nd respondent/complainant died and the revision petitioner is ready to pay the compensation amount to the legal heirs of the 2nd respondent. The learned Public Prosecutor has no objection with regard to the above submission.

5. The specific case of the complainant was that Ext.P1 was issued in discharge of a debt. When it was presented for encashment, it was dishonoured for the reason funds insufficient. Ext.P2 and Ext.P3 are the

dishonour memos. He issued a lawyer notice to the accused. Ext.P4 is the copy of the lawyer notice. Ext.P5 is the postal acknowledgment. A perusal of Exts.P1 to P3 shows that when Ext.P1 was presented for encashment, there was no sufficient fund to honour the cheque. Therefore, the trial Court observed that the cheque was dishonoured for the reasons stated u/s.138 of the N. I.Act and presumption u/s.139 of the N.I. Act can be drawn in favour of the holder of the cheque.

6. Section 139 of the N.I. Act says about certain presumptions, which 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.

There is no dispute with regard to the issuance of cheque.

When cheque is dishonoured for the reasons stated u/s.138 of the N.I. Act, a presumption u/s.139 of the N.I. Act can be drawn in this case. It is the responsibility of the revision petitioner to rebut the presumption by adducing evidence. Such rebuttal evidence is not found in this case. The principle drawing presumptions has been explained by the Apex Court in Hiten P. Dalal v. Bratindranath Banerjee (AIR 2001 SC 3879]. The trial Court and the appellate Court observed that no rebuttal evidence is available in this case and therefore, convicted the revision petitioner. I do not find any illegality in the above order. Therefore, the conviction u/s.138 of the N.I. Act is only to be confirmed.

6. The trial Court sentenced the revision petitioner to undergo simple imprisonment for three months and to pay compensation of ₹28,500/-. On a perusal of the above

judgment, I am of the opinion that imprisonment for three months imposed by the trial Court is too harsh. Therefore, it needs to be modified. In the circumstances, the revision petitioner is sentenced to imprisonment till rising of the Court u/s.138 f the N.I. Act and to pay compensation of ₹27,500/-, u/s.357(3) Cr.P.C. in default of payment of compensation, simple imprisonment for three months. If the cheque amounts is deposited, it shall be disbursed to the legal heirs of the 2nd respondent. The revision petitioner is directed to surrender in the Chief Judicial Magistrate, Kasaragod Court forthwith, failing which the learned Magistrate shall issue Non Bailable Warrant against the revision petitioner.

P.D. RAJAN, JUDGE.

acd

