IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

Crl.Rev.Pet.No. 638 of 2004 (B)

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 214/2002 of I ADDL.SESSIONS COURT, THRISSUR DATED 13-06-2003
AGAINST THE JUDGMENT IN ST 2824/2000 of JUDICIAL MAGISTRATE OF THE FIRST CLASS,WADAKKANCHERRY DATED 13-05-2002

REVISION PETITIONER(S)/APPELLANT/ACCUSED.:

P.K.SURESH BABU, S/O.KRISHNAN,
PARAPARAMBIL HOUSE, ERATUKULANGARA, WADAKKANCHERY.

BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.RENJITH B.MARAR

RESPONDENT(S)/COMPLAINANT AND STATE OF KERALA:

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1. C.H.MOIDEEN, S/O.C.S.HUSAIN, CHARALIL PEEDIKAYIL HOUSE, VADAVOOR, TALAPPILLY TALUK.

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

R2 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.638 of 2004

Dated this the 8th day of October, 2015

ORDER

The revision petitioner, who is the appellant in Crl.Appeal No.214/2002 of I Additional Sessions Judge, Thrissur, challenges the judgment of 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.2824/2000 on the file of Judicial Magistrate of the First Class, Wadakkanchery and convicted and sentenced to simple imprisonment for three months.

2. The complainant's case in the trial Court was that the accused borrowed a sum of ₹38,000/- from him on 29.12.1999 and in discharge of that debt, he issued Ext.P2

cheque. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. The complainant demanded the amount by giving a notice in writing. But, there was no repayment even after notice. In the circumstances, the above complaint was filed in this trial Court.

3. During trial, the complainant was examined as PW1 and his documents were marked as Exts.P1 to P6. The incriminating circumstances brought out in evidence were denied by the accused, while questioning him. He did not adduce any defence evidence. After analysing the evidence, the trial Court convicted him. Against that, he preferred an appeal, in which the conviction was confirmed and the sentence was modified. Being aggrieved by that, he preferred this revision petition.

4. When the case came up for hearing, the learned counsel appearing for the revision petitioner submits that

the judgment in appeal confirming the conviction is against law and liable to be set aside. He further contended that Ext.P1 pronote was also not produced and the revision petitioner had rebutted the presumption available u/s.139 of the N.I. Act by adducing evidence. The learned counsel prays for modification in the sentence.

5. Heard the learned Public Prosecutor.

6. The specific case of PW1 in the trial Court was that Ext.P2 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 copy of the lawyer notice. Ext.P5 is the postal acknowledgment card. Ext.P6 is the postal receipt. A perusal of Exts.P1 to P6 shows that when Ext.P2 was presented for encashement, it was dishonoured for the reason of funds insufficient. Ext.P1 is the promisory note and the signature of the revision petitioner

in Ext.P1 was admitted. When the cheque is dishonoured for the reasons stated u/s.138 of the N.I. Act, a presumption u/s.139 can be drawn in favour of the holder of the cheque.

7. 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".

Apex Court in three-Judge Bench judgment in **Rangappa** v. **SriMohan** [(2010) 11 *SCC* 441] held as follows:

> The presumption mandated by Section 139 includes a presumption that 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 favour the respondent complainant"

The issuance of cheque was admitted by the revision petitioner. The signature in Ext.P2 cheque and Ext.P1 promisory note were also admitted. But, no rebuttal evidence was adduced by the revision petitioner. Therefore, the trial Court presumed that Ext.P2 was issued in discharge of a debt and thus the offence u/s.138 of the N.I. Act was proved beyond any reasonable doubt, which was upheld by the appellate Court. I do not find any illegality in the above finding.

8. The Appellate Court sentenced the revision petitioner to imprisonment for one month with a direction to pay compensation of ₹43,000/- to the complainant u/s.357(3) Cr.P.C., in default, simple imprisonment for one month. The conviction passed by the trial Court u/s.138 of

N.I. Act is confirmed. However, considering the nature of offence and character of the offender, the sentence can be modified. Accordingly, I modify the sentence as follows:

The revision petitioner is sentenced to imprisonment till rising of the Court and to pay compensation of ₹43,000/- u/s.357(3) Cr.P.C. If the compensation amount is realized, it shall be disbursed to the 1st respondent. The revision petitioner is directed to surrender in the Judicial Magistrate of the First Class, Wadakkancherry forthwith to undergo the modified sentence, in default, the learned Magistrate shall issue non bailable warrant against the revision petitioner.

The Crl. Revision Petition is disposed of.

P.D. RAJAN, JUDGE.

acd