

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

Crl.Rev.Pet.No. 775 of 2006 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO.144/2002 of ADDL.SESIONS COURT
(ADHOC)-1, KOTTAYAM DATED 10.02.2005
AGAINST THE JUDGMENT IN CC 662/1994 of J.M.F.C., CHANGANASSERY
DATED 5.1.2002

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

P.M.KURIAKOSE, PROPRIETOR FOAM LAND,
KANNOMTHUMCHAL, SOUTH BAZAR, KANNORE.

BY ADV. SRI.SOORAJ ELANJICKAL

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.
2. BLISS FOAM INDUSTRIAL ESTATE,
REPRESENTED BY MANAGING PARTNER
BABY MATHEW VETTOOR.

BY PUBLIC PROSECUTOR SRI. N. SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 18-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.775 of 2006

Dated this the 18th day of September, 2015

ORDER

The revision petitioner, who is the appellant in Crl.Appeal No.144/2002 on the file of Additional Sessions Judge, (Adhoc)-I, Kottayam, 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 C.C.No.662/1994 of Judicial First Class Magistrate Court, Changanasserry for offence u/s.138 of the N.I. Act. He was convicted and sentenced to undergo rigorous imprisonment for three months u/s.138 of the N.I. Act and to pay compensation of ₹64,000/- 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.

2. The complainant's case in the trial Court was that the accused purchased goods from the complainant firm and in discharge of that debt, he issued a cheque for ₹64,000/- dated 18.3.1994 drawn on S.B.T., Puzhathi, Kannoorr branch. When the cheque was presented for encashment through S.B.T. Industrial Estate Branch, it was dishonoured for the reason of funds insufficient. The complainant gave a lawyer notice to the accused and even after receipt of that notice, there was no repayment. In the circumstances, he filed the above complaint in the Judicial First Class Magistrate Court, Changanasserry. The complainant is the second respondent in this revision petition.

3. In the trial Court, PW1, the Managing Partner of

the complainant firm was examined and his documents were marked as Exts.P1 to P15. PW2 and PW3 were also examined by the complainant. The accused denied the allegation and he examined DW1 to DW4 and produced Exts.D1 to D19. The trial Court, after analysing the evidence, convicted the revision petitioner, which was upheld by the appellate Court.

4. The specific case of the complainant was that Ext.P2 cheque was issued in discharge of a debt by the accused. PW2 is the Manager of the State Bank of Travancore, Puzhathi, Kannoor. Ext.P1 is the partnership deed. As a part payment, the revision petitioner issued Ext.P2 cheque for ₹64,000/-. When it was presented for encashment, dishonoured for the reason of funds insufficient. Ext.P3 is the dishonour memo. Ext.P4 is the intimation. He sent a lawyer notice and Ext.P5 is the copy

of the lawyer notice. Ext.P6 is the postal receipt and Ext.P7 is the acknowledgment card. To prove the financial transaction of the firm, he produced Exts.P9 to P15 series. PW2 and PW3 supported the evidence of PW1. PW2 deposed that Ext.P2 was dishonoured for the reason of funds insufficient. Analysing the evidence of PW1 to PW3, it is found that the cheque was dishonoured for the reason of funds insufficient.

5. When cheque is dishonoured for the reason stated u/s.138 of the N.I. Act, 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). Section 139 of the N.I. Act 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 adduced both oral and documentary evidence to rebut the presumption. He examined DW1 to DW4 and produced Exts.D1 to D19. The trial Court and the appellate Court were of the opinion that to rebut the presumption u/s.139 of the N.I. Act, the evidence of DW1 to DW4 and Exts.D1 to D19 are not sufficient and thus convicted the revision petitioner. The appellate Court also approved the conviction. I do not find any illegality or irregularity in the findings of the Court below.

6. The learned counsel appearing for the revision petitioner submitted that a leniency may be shown in sentence. In the circumstances, I modify the sentence as follows:

The revision petitioner is sentenced to imprisonment

till rising of the Court and to pay a sum of ₹64,000/- as compensation u/s.357(3) Cr.P.C., in default simple imprisonment for three months. The revision petitioner is directed to appear before trial court within 30 days from today, for receiving the modified sentence, failing which Judicial Magistrate of First Class, Changanasserry shall issue Non-bailable Warrant against the revision petitioner. If the compensation amount is realised, it shall be disbursed to the 2nd respondent.

The revision petition is disposed of as above.

P.D. RAJAN, JUDGE.

acd

