

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

Crl.Rev.Pet.No. 3120 of 2003 ()

**AGAINST THE JUDGMENT IN CRL. APPEAL 801/2002 of ADDITIONAL DISTRICT COURT
(ADHOC), ERNAKULAM**

AGAINST THE JUDGMENT IN CC 1308/1999 of J.M.F.C.-II, ERNAKULAM

REVISION PETITIONER(S):

**T.P.SELINS,
S/o.PETER,
THOTTATHUSSERY HOUSE,
SRM ROAD, PACHALAM,
KOCHI-12.**

**BY ADVS.SRI.P.JACOB VARGHESE (SR.)
SRI.VIVEK VARGHESE P.J.**

RESPONDENT(S):

- 1. K.J. SEBASTIAN JAYASEELAN,
KURISINKAL HOUSE,
KALATHIPARMBIL ROAD,
VADUTHALA.**
- 2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.**

R2 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14-
10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.3120 of 2003

Dated this the 14th of October, 2015

ORDER

Revision petitioner, who is the appellant in Crl. Appeal 801/02 on the file of the Sessions Judge, Adhoc-I, Ernakulam challenges the concurrent findings of conviction under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'Act'). He was accused in C.C.1308/99 on the file of the Judicial First Class Magistrate-II, Ernakulam for offence punishable under Section 138 of the Negotiable Instruments Act, he was convicted and sentenced to simple imprisonment for one year and to pay a fine of Rs.5000/- in default, simple imprisonment for 30 days.

2. The complainant's case in the trial court was that, accused borrowed a sum of Rs.8,00,000/- from him and in discharge of that debt he issued Ext.P1 cheque. 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 to the accused, which was received by the accused and no payment thereafter. In the circumstance, he filed a complaint in the Judicial First Class Magistrate-II, Ernakulam.

3. To prove the offence, complainant was examined as PW1 and his documents were marked as Exts. P1 to P7. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. He examined DW1 and produced Ext.D1 in support of his defence. The court exhibit was marked as Ext.C1. The trial court after analysing the evidence convicted the accused. Against that he preferred an appeal, which was dismissed by the appellate court. Being aggrieved by that, he approached this court with this revision petition.

4. The learned counsel appearing for the revision petitioner contended that the revision petitioner had already undergone the sentence and in the light of the above submission, I heard the Public Prosecutor.

5. The revisional power conferred to the High Court

is to correct grave miscarriage or failure of justice arising from erroneous orders. While exercising this power, the court need not rectify every error but when there is grave failure of justice, its interference is justified. The fact that the lower court has taken a wrong view of law or evidence on record cannot be a reason to interfere unless it has resulted in grave miscarriage of justice. This jurisdiction is only a supervisory jurisdiction to find out the illegality, irregularity in the order or sentence or proceedings of the Court below.

6. The evidence of PW1 shows that Ext.P1 was issued in discharge of a debt. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. Ext.P2 and Ext.P3 are the memos issued from the bank. He demanded the due amount by issuing Ext.P4 lawyer notice and Ext.P5 is the acknowledgment card. Ext.P6 is the reply notice and Ext.P7 is the extract of the ledger. While analyzing the evidence of PW1 and Exts.P1 to P7, it is clear that Ext.P1 was dishonoured for the reason of funds insufficient. When the cheque is

dishonoured for the reasons stated under Section 138 of the Negotiable Instruments Act a presumption under Section 139 of the Negotiable Instruments Act is drawn in favour of the holder of the cheque.

7. When complainant proves that the cheque was received for the reasons stated under Section 138 of the N.I. Act, 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”.

Revision petitioner disputed the transaction and examined DW1 and marked Ext.D1. The copy of the C.D. statement of the accused was also relied by the court, which was marked as Ext.C1. DW1 deposed that he had no knowledge with regard to the transaction. Therefore, trial court was of the opinion that, revision petitioner failed to discharge his initial responsibility to rebut the

presumption under Section 139 of the Negotiable Instruments Act. In **Narayana Menon v. State of Kerala 2006 (3) KLT 404 (SC)** apex court held that, it is the responsibility of the accused to rebut the presumption under Section 139 by adducing convincing evidence. Even though, DW1 was examined, that evidence is not sufficient to rebut the presumption. In the circumstance, trial court convicted the accused which was upheld by the appellate court. I find no illegality in the above findings. In the result, the conviction and sentence passed under Section 138 of the Negotiable Instruments Act is confirmed. The accused had already undergone the sentence and there is no reason to interfere. There is no merit in this revision petition and it is dismissed accordingly.

STK

//TRUE COPY//

P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE