IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

Crl.Rev.Pet.No. 42 of 2007 (A)

AGAINST THE JUDGMENT IN CRL. APPEAL 148/2006 of ADDL. SESSIONS COURT (ADHOC-I), KOTTAYAM

AGAINST THE JUDGMENT IN CC 808/2004 of JUDL. MAGI. OF FIRST CLASS-III, KOTTAYAM

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

VALSAMMA SASIKUMAR,
W/O.SASIKUMAR, ANANDABHAVAN,
KARIKUNNAM P.O.,
THODUPUZHA.

BY ADVS.SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.RENJITH B.MARAR
SRI.DILEEP P.PILLAI
SMT.LAKSHMI.N.KAIMAL
SRI.V.SHYAMOHAN

RESPONDENT(S)/RESPONDENT/STATE:
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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

2. MAHESWARI, PROPRIETRESS,
MOHAN AGENCIES, VYAPARABHAVAN, M.L.ROAD
KOTTAYAM.

R1 BY PUBLIC PROSECUTOR SRI. N. SURESH
R2 BY ADV. SRI.A.K.HARIDAS

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

STK

P.D. RAJAN, J.

Crl.R.P.42 of 2007

Dated this the 29th of October, 2015

ORDER

The revision petitioner, who is the appellant in Crl. Appeal 148/06 on the file of the Sessions Court, Kottayam challenges the concurrent conviction under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the 'N.I. Act'). She was accused in C.C.808/04 on the file of the Judicial First Class Magistrate-III, Kottayam and convicted for offence punishable under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment for one month and pay compensation of Rs.27,997.50 under Section 357(3) Cr.P.C., in default, to undergo simple imprisonment for one month. Against that, she preferred the above appeal, in which the conviction was confirmed and sentence was modified. Being aggrieved by that, she preferred this revision petition.

2. The second respondent in this revision is the

complainant in the trial court. Her case in the trial court is that, in discharge of a debt accused 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 repayment thereafter. In the circumstance, a complaint was filed in the trial court.

3. During trial, complainant was examined as PW1 and her documents were marked as Exts. P1 to P7. The incriminating circumstances brought out in evidence were denied by the accused while questioning her. DW1 was examined from the side of the accused and marked Exts.D1 and D7. The trial court after sifting and weighing the evidence on record convicted the accused.

4. The learned counsel appearing for the revision petitioner contended that the execution of the cheque is not proved. Therefore, presumption is not available. The defence evidence, Ext.D6 is not sufficient to show that cheque was issued as a security. Since there is no legally

enforceable debt, the conviction is unsustainable.

5. Heard the Public Prosecutor and learned counsel appearing for the second respondent.

6. The second respondent's case in the trial court is that in discharge of a debt, accused (revision petitioner) issued Ext.P1 cheque. When it was presented for encashment, it was dishonoured of the reason of funds insufficient. Ext.P2 is the dishonour memo and Ext.P3 is the intimation. PW1 gave a lawyer notice. Ext.P4 is the copy of the lawyer notice. Ext.P5 is the postal receipt. Ext.P6 is the acknowledgment card. Revision petitioner sent Ext.P7 reply notice. A perusal of oral evidence of PW1 and Ext.P1 and P2, it is clear that the cheque was dishonoured for the reason of funds insufficient. When cheque is dishonoured for the reason stated under Section 138 of the Negotiable Instruments Act, a presumption under Section 139 of the Negotiable Instruments Act can be 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, a 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".

The apex court in **Mandvi Co-operative Bank Ltd. V. Nimesh B. Thakore, AIR 2010 SC 1402** held that, a rebuttable presumption is created under Section 139 of N.I. Act, that the cheque was issued by the drawer in discharge of any debt or liability owned by her to its holder.

8. To rebut the presumption, revision petitioner examined DW1 in the trial court and produced Ext.D1 to D7 and contended that Ext.P1 was not issued in discharge of a debt or liability. He also contended that Ext.D6 is sufficient to prove that point. Even though, such a contention was raised by the revision petitioner in the trial court, that evidence is not sufficient to rebut the

presumption available under Section 139 of the N.I.Act and trial court rejected that contention and convicted the revision petitioner, which was upheld by the appellate court. I find no illegality in the above judgment.

The appellate court confirmed the trial court's direction to pay compensation of Rs.27,997.50 as compensation to the second respondent under Section 357(3) Cr.P.C., I modify it as Rs.28,000/- under Section 357(3) Cr.P.C. There is no merit in this revision petition and it is dismissed accordingly. The first revision petitioner shall appear before Judicial First Class Magistrate-III, Kottayam to undergo the modified sentence, failing which the trial Magistrate shall issue non-bailable warrant forthwith.

Sd/-

P.D. RAJAN,

JUDGE

STK

//TRUE COPY//

P.A. TO JUDGE