IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

Crl.Rev.Pet.No. 69 of 2007 (C)

AGAINST THE JUDGMENT IN Crl.Appeal 526/2003 of ADDL.SESSIONS JUDGE, FAST TRACK COURT -II, ALAPPUZHA DATED 26-08-2006

AGAINST THE JUDGMENT IN CC 514/2000 of J.M.F.C., RAMANKARI DATED 22.11.2003

REVISION PETITIONER(S)/APPELLANTS/ACCUSED 1,2,3 AND 6:

1. VENAD KURIES, REGD. OFFICE DOOR NO. 872/X, HARI VILAS, THATHAMPALLY P.O. ALAPPUZH, REP. BY ITS MANAGING PARTNER SANKAR.
2. R.SANKAR, S/O. RUDRA DAS, MANAGING PARTNER, VENAD KURIES, SREEKUMAR BUILDINGS C.C.S.B. ROAD, ALAPPUZHA.
3. K.RAMESAN, S/O. KUMARAN, MADATHIL HOUSE, THONDANKULANGARA, ALAPPUZHA.
4. M.NAZIR, S/O. E.M.IBRAHIM, NISHI GARDENS, VELLAKKINAR, ALAPPUZHA.

BY ADVS.SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT, ACCUSED 4 AND 5 & STATE:

1. M.Y.SAJITH, CHAPRAYIL HOUSE, CANAL WARD, ALAPPUZHA.
2. M.AYYAPPAN NAIR, S/O. KUTTAPPAN NAIR, SOUTH WARRIAM, THONDANKULANGARA, ALAPPUZHA.
3. T.V.REJI, S/O. VIDHYANANDAN, ANANDA BHAVANAM, POWER HOUSE WARD, ALAPPUZHA.
4. STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R, BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE.
R,R.2,3 BY ADV. SRI.K.MOHAN
R,R.2,3 BY ADV. SRI.S.SOMAN

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

acd

P.D. RAJAN, J.

Crl.R.P.No.69 of 2007

Dated this the 10th day of August, 2015

ORDER

The revision petitioners challenge the judgment in Crl.Appeal No.526/2003 of Additional Sessions Judge, Fast Track Court-II, Alappuzha. The revision petitioners were accused in C.C.No.514/2000 of Judicial First Class Magistrate Court, Ramankary, which was filed for offence punishable u/s.138 of the Negotiable Instruments Act. They were convicted by the trial Court and sentenced thereunder. Against that, they preferred the above Crl. Appeal, in which 4th and 5th accused were acquitted u/s.255(1) Cr.P.C. Against that judgment, accused 1 to 3 and 6 preferred this revision petition.

2. The brief facts given rise to the indictment were that, the 1st petitioner is a partnership firm and 2nd petitioner is the Managing Partner and other two petitioners are partners of the firm, which is engaged in the business of Chitty and finance transactions. The 1st petitioner is liable to pay a sum of ₹1,50,000/- to the 1st respondent and in discharge of that debt, they issued 7 cheques to the 1st respondent on 7.7.1998 drawn on State Bank of India, Mullackal Branch. On 5.10.1998, when it was presented for encashment for ₹30,000/-, it was dishonoured for the reason 'insufficient funds'. Even though the 1st respondent sent a demand notice, there was no repayment. In the circumstances, the above case was filed.

3. During the pendency of the case, the defacto complainant died and his legal heirs were impleaded. They

examined PW1 and PW2 and produced Exts.P1 to P8 in support of their contention. The incriminating circumstances brought out in evidence were denied by the revision petitioners while questioning them u/s.313 Cr.P.C. They examined DW1 and DW2 and produced Exts.D1 to D7. The trial Court after analysing the evidence convicted the accused.

4. The learned counsel for the revision petitioners contended that all other cases pertaining to dishonour of cheque were settled by the revision petitioners and this is the only case pending after settlement. Earnest effort made by the revision petitioners to trace out the 1st respondent is in vain, since he is now in abroad. In the circumstances, the learned counsel for the revision petitioners submitted that this revision petition may be disposed of by modifying the sentence.

5. According to Section 138 of the Negotiable Instruments Act, where any cheque drawn by a person on an account maintained by him with a bank for payment of any amount of money to another person from out of that account, for the discharge in whole or in part of any debt or liability, is returned by the bank, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with a bank, such person shall be deemed to have committed an offence under Section 138 of the Negotiable Instruments Act. This deemed provision is subject to the statutory condition that the cheque has to be presented within the statutory period in which it is drawn or within the period of its validity. Secondly, the payee or holder in due course of the cheque makes a

demand for payment of such amount by giving a notice in writing to the drawer of the cheque and non-payment of due amount after receipt of notice by the drawer of the cheque.

6. In this case, after the death of the defacto complainant, PW1, the brother of the complainant was examined in the trial Court. He deposed about the transaction. He also examined PW2. Ext.P1 was dishonoured for the reason of 'funds insufficient. Ext.P2 is the dishonour memo. Ext.P3 is the notice sent by the complainant to the accused. Ext.P4 is the postal receipt. Ext.P5 is the acknowledgment card. He also produced Exts.P6 and P7 account particulars and account opening form. PW2 deposed that, when Ext.P1 was presented for encashment, there was no sufficient fund to honour Ext.P1. The appellate Court drawn a presumption u/s.139 of the

N.I. Act. Relied the decision in **Narayana Menon** v. **State of Kerala** [2006(3) KLT 404 (SC)].

7. The revision petitioners examined DW1 and DW2 in the trial Court to rebut the presumption u/s.139 of the N.I. Act. Even though DW1 and DW2 were examined and the documents Exts.D1 to D7 were produced by them, the trial Court was of the opinion that those evidence are not sufficient to absolve the liability of the revision petitioners. In the circumstances, the revision petitioners and other accused were convicted. But, after considering the matter, A4 and A5 were acquitted by the appellate Court. I do not find any illegality in the order passed by the appellate Court. Therefore, the conviction passed by the appellate Court is confirmed. But, considering the nature of offence, sentence is modified as follows:

1) The revision petitioners are sentenced to

undergo imprisonment till rising of the Court and to pay compensation of ₹30,000/-, in default of payment of compensation, simple imprisonment for three months.

The Criminal Revision Petition is disposed of as above.

P.D. RAJAN, JUDGE.

acd