

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

Crl.Rev.Pet.No. 127 of 2007 (A)

**CRA 975/2005 of ADDITIONAL SESSIONS COURT (ADHOC-I), ERNAKULAM
CC 809/2001 of JUDL.M.F.C.-I,ERNAKULAM**

REVISION PETITIONER(S)/APPELLANT/ACCUSED :

**SOBHA.P.V., AGED 41 YEARS,
M/S.SOBHA CEMENT WORKS, CHERUVATTUR HOUSE
VENKITANGU P.O., THRISSUR DISTRICT.**

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENT(S)/COMPLAINANT AND STATE :

- 1. THE NATIONAL SMALL INDUSTRIES
CORPORATION LTD., S-67, G.C.D.A.COMMERCIAL
COMPLEX, MARINE DRIVE, SHANMUGHAN ROAD
KOCHI-31.**
- 2. THE STATE OF KERALA, REPRESENTED
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
15-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VS

P.D.RAJAN, J.

Crl.R.P.No.127 of 2007

Dated this the 15th day of October, 2015

ORDER

Revision petitioner is the appellant in Crl.Appeal No.975/2005 of Addl.Sessions Judge(Adhoc-I), Ernakulam, challenges the judgment of concurrent findings of conviction under Section 138 of the Negotiable Instruments Act (hereinafter referred to 'the Act' for short). She was also the accused in C.C.No.809/2001 on the files of Judicial First Class Magistrate Court-I, Ernakulam was convicted under Section 138 of the Act and sentenced to undergo imprisonment for one year and also to pay a sum of Rs.17,100/- as compensation to the complainant under Section 357 of the Code of Criminal Procedure.

2. The respondent is the complainant in the trial court, which is a registered company, established to promote small-scale industries through out the country. The accused availed a financial assistance of the

complainant for the business purpose. There was a liability of Rs.11,423/- in the business transaction and in discharge of that liability, the accused issued Ext.P2 cheque. When it was presented for encashment, it was dishonoured for the reason 'funds insufficient'. The accused demanded the amount by issuing a notice in writing. Even after receipt of notice, there was no payment. In that circumstances, the above case was filed in the trial court.

3. During trial Exts.P1 to P7 were marked as documentary evidence. The incriminating circumstances were brought out in evidence are denied by the accused while questioning her. She did not adduce any evidence in support of her defence. The trial court acquitted the accused and being aggrieved by that she preferred this appeal.

4. Heard the learned counsel for the appellant Sri.Sathianatha Menon and the learned Public Prosecutor Sri.Dhanesh Mathew Manjooran for the second

respondent.

5. The learned counsel appearing for the revision petitioner argued that since the liability is only for a Rs.11,423/-, the trial court awarded a huge amount as compensation for the offence. Hence the accused seeks for a modification of the compensation amount awarded by the trial court.

6. The specific case of the first respondent in the trial court was that in discharge of a debt, the revision petitioner issued Ext.P2 cheque and when it was presented for encashment, it was dishonoured for the reason 'funds insufficient'. Ext.P3 is the dishonour memo, Ext.P4 is the intimation letter, Ext.P5 is the copy of the notice and Ext.P6 is the receipt. The evidence shows that when Ext.P2 was presented for encashment, it was dishonoured for the reasons stated under Section 138 of the Act and presumption under Section 139 of the Act can be drawn in favour of the holder of the cheque.

7. 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”.

8. It is the responsibility of the revision petitioner to rebut the presumption under Section 139 of the Act. In the decision reported in **Beena V. Muniappan (AIR 2001 SC 2995)**, it is held that the presumption under Section 139 of the Act is a rebuttal presumption. In the absence of any convincing evidence, the trial court convicted the accused and which had upheld by the appellate court and I find no illegality in the above conviction entered by the courts below.

9. The appellate court modified the sentence imposed by the trial court and sentenced the revision petitioner to undergo imprisonment till rising of the court and to pay a compensation of Rs.16,500/- and in default to undergo simple imprisonment for 3 months under Section 357(1) of the Code of Criminal Procedure. Since the cheque amount is only for a Rs.11,423/-, no reasons are

stated by the trial court on the appellate court while awarding compensation.

Considering the facts and circumstances of the case, I modified the sentence imposed by the courts below as follows: The revision petitioner is sentenced to undergo imprisonment till rising of the court under Section 138 of the Act and she is also sentenced to pay a sum of Rs.11,423/- to the complainant under Section 357(3) of the Code of Criminal Procedure as compensation, in default to undergo simple imprisonment for one month. Revision petitioner is directed to surrender in the trial court to undergo the modified sentence forthwith, failing which the Judicial First Class Magistrate Court-I, Ernakulam is directed to issue a non-bailable warrant against the accused and accordingly this revision petition is disposed of.

Sd/-
P.D.RAJAN
JUDGE

VS