

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

Crl.Rev.Pet.No. 150 of 2007 ()

**AGAINST THE JUDGMENT IN CRA 507/2004 of ADDL. SESSIONS COURT
FAST TRACK-II, PALAKKAD**

AGAINST THE JUDGMENT IN CC 214/2003 of J.M.F.C.,CHITTUR

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

**P.N. RAVINDARAN,
S/O. P.K.NARAYANANSWAMY CHETTIAR,
SATHYA NIVAS
THEKKETHARA, AYLUR, NEMMARA,
PALAKKAD DISTRICT.**

BY ADV. SRI.P.R.VENKETESH

RESPONDENT(S)/RESPONDENT/COMPLAINANT::

- 1. B. VIJAYAKUMAR, S/O.SANKARANARAYANAN,
BHIMMATH HOUSE, CHITTUR, PALAKKAD DISTRICT.**
- 2. STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR, CHITTUR
PALAKKAD THROUGH PUBLIC PROSECUTOR
HIGH COURT OF KERALA.**

R2 BY PUBLIC PROSECUTOR SRI. N. SURESH

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18-
11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.150 of 2007

Dated this the 18th of November, 2015

ORDER

The revision petitioner, who is the appellant in Crl. Appeal 507/04 on the file of the Addl. Sessions Judge, Fast Track Court-II, Palakkad challenges the concurrent conviction under Section 138 of the Negotiable Instalments Act (hereinafter referred to as 'N.I.Act'). He was accused in C.C.214/03 on the file of the Judicial First Class Magistrate, Chittoor for offence punishable under Section 138 of the N.I. Act. The accused was convicted and sentenced to simple imprisonment for 6 months and to pay compensation of Rs.75,000/- under Section 357(3) Cr.P.C., in default, to undergo simple imprisonment for 3 months. Against that he preferred an appeal, which was dismissed by the appellate court. Being aggrieved by that, he preferred this revision petition.

2. The complainant is the first respondent in this revision petition. The complainant's case in the trial court is that, the accused borrowed a sum of Rs.1,05,000/- from

him. Subsequently, he paid a sum of Rs.35,000/- and in discharge of the balance amount, he issued a cheque for Rs.70,000/- drawn on Canara Bank, Nenmara Branch. 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. Even after receipt of that notice, there was no repayment. In the circumstance, a complaint was filed in the trial court.

3. During trial, complainant examined PW1 and his documents were marked as Exts. P1 to P9. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. He examined DW1 to DW3 and marked Ext.D1 series in support of his defence evidence. 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 sentence imposed by the trial court is too harsh and hence it may be modified.

5. Notice to first respondent was returned stating “not known”. In the circumstance, notice to first respondent was dispensed with. I heard the learned Public Prosecutor appearing for the second respondent.

6. According to Section 138 of the N.I. 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 N.I. 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.

7. PW1 is the power of attorney holder of the complainant. PW1 deposed that accused borrowed a sum of Rs.1,05,000/- and he repaid a portion of the amount. For the balance amount, he issued Ext.P2 cheque. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. Ext.P3 is the dishonour memo, Ext.P4 is the intimation, Ext.P5 is the copy of the lawyer notice and Ext.P6 is the acknowledgment card. Ext.P7 and P8 are the reply notices. Ext.P9 is the copy of the lawyer notice. A perusal of Exts.P3 and P4 shows that the cheque was dishonoured for the reason of funds insufficient. When a cheque is dishonoured for the reasons stated under Section 138 of the N.I. Act, a presumption under Section 139 of the N.I. Act is drawn in favour of the holder of the cheque. 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 N.I. Act starts operating and burden shifts to the accused. 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 Apex Court in **Rangappa V. Sri Mohan (2010(11) SCC 441)** held that, the presumption is rebuttable. Revision petitioner examined DW1 to DW3 and marked Exts.D1 series to rebut the presumption under Section 139 of the N.I. Act. DW1 is the accused himself. DW2 and DW3 are the persons alleged to have received amount from the first respondent/complainant. Even though, the evidence of DW1 to DW3 were adduced and marked Exts.D1 series, the trial court observed that, it is not sufficient to rebut the presumption under Section 139 of the N.I. Act and convicted the accused and the appeal was dismissed by the appellate court. I find no illegality in the findings of the courts below. Therefore, the conviction

passed under Section 138 of the N.I. Act is confirmed. The trial court sentenced the revision petitioner to undergo simple imprisonment for six months and to pay a compensation of Rs.75,000/- under Section 357(3) Cr.P.C, which needs modification. Considering the nature of transaction, the sentence imposed by the trial court is modified as follows;

The revision petitioner is sentenced to imprisonment till rising of court under Section 138 of the N.I. Act and pay compensation of Rs.75,000/- under Section 357(3) Cr.P.C., in default of payment of compensation, simple imprisonment for 3 months. The revision petitioner is directed to surrender in the trial court to undergo the modified sentence within 6 weeks from today, failing which, the Judicial First Class Magistrate, Chittoor shall issue non-bailable warrant. This revision petition is disposed of accordingly.

STK

//TRUE COPY//

P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE