

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

Crl.Rev.Pet.No. 907 of 2002 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 440/1998 of SESSIONS
COURT,TRIVANDRUM DATED 07-08-2001

AGAINST THE JUDGMENT IN CC 376/1997 of J.M.F.C.-II,ATTINGAL
DATED 31-10-1998

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

VINAYAKAN, S/O.KUTTAN, K.K.NIVAS,
PULLAYIL DESOM, KODUVAZHANOOR VILLAGE.

BY ADV. SRI.P.PARAMESWARAN NAIR

RESPONDENT(S)/RESPONDENTS/COMPLAINAT:

1. SHAJAHAN, S/O.MUHAMMED RASHEED,
PARAKETIL VEEDU, PEROOR DESOM, VELLALLOOR VILLAGE.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R2, BY PUBLIC PROSECUTOR SRI.N. SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 20-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.907 of 2002

Dated this the 20th day of October, 2015

ORDER

Revision petitioner, who is the appellant in Crl.Appeal No.440/1998 of Sessions Judge, Thiruvananthapuram, challenges the concurrent finding of conviction u/s.138 of the Negotiable Instruments Act (hereinafter referred to as the N.I. Act). He was the accused in C.C.No.376/1997 of the Judicial First Class Magistrate Court-II, Attingal for offence u/s.138 of the N.I. Act, he was convicted and sentenced to imprisonment for one year. Against that, he preferred the above appeal, which was dismissed by the appellate Court. Being aggrieved by that, he preferred this revision petition.

2. The complainant's case in the trial Court is that the accused borrowed a sum of ₹1 lakh and in discharge of that debt, he issued Ext.P1 cheque. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. The complainant demanded the money by giving a notice in writing to the accused. Even after receipt of notice, he was not cared to repay the amount. In the circumstances, a complaint was filed in the trial Court.

3. During trial, the prosecution examined PW1 and PW2 and Exts.P1 to P6 were marked as documentary evidence. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. He did not adduce any defence evidence. The trial Court convicted him.

4. The learned counsel appearing for the petitioner

contended that there was no legally enforceable debt and the trial Court convicted the accused without considering the above part. Heard the learned Public Prosecutor also and notice to 1st respondent is dispensed with.

5. 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 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. To prove the allegation, the complainant was examined as PW1. His evidence shows that when Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient. Ext.P2 is the dishonour memo. Ext.P3 is the cheque return memo. He issued a lawyer notice. Ext.P5 is the copy of the lawyer notice. Ext.P4 is the postal receipt. Ext.P6 is the postal acknowledgment card. Exts.P1 to P6 shows that when

Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient. PW2, eye witness also supported the transaction. Analysing the evidence of PW1 and PW2 and documentary evidence of Exts.P1 to P6, it is presumed that the cheque was dishonoured for the reasons stated u/s.138 of the N.I. Act.

7. When cheque is dishonoured for the reasons stated u/s.138 of the N.I.Act, a presumption u/s.139 of the N.I. Act can be drawn in favour of the holder of the cheque.

8. 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 signature in Ext.P1 was admitted by the revision petitioner, but he disputed the execution of Ext.P1. Even

though he disputed the execution, no rebuttal evidence has been adduced in this case. The principle drawing presumptions has been explained by the Apex Court in Beena v. Muniappan (AIR 2001 SC 2995), in which it is held that a presumption u/s.139 of the N.I. Act is a rebuttable presumption, for that, the accused has to bring a reasonable probability or adduce documentary evidence to rebut such presumption. In the absence of such rebuttal evidence, the conviction passed by the trial Court u/s.138 of the N.I. Act is only to be confirmed.

9. The learned counsel appearing for the revision petitioner contended that sentence imposed by the trial Court is too harsh. The revision petitioner is sentenced to imprisonment for one year, which needs interference. Considering the facts and circumstances of the case, the sentence is modified as follows:

1) Revision petitioner is sentenced to imprisonment till rising of the Court u/s.138 of the N.I. Act and to pay compensation of ₹1 lakh u/s.357(3) Cr.P.C.

2) If the compensation amount is realised, it shall be disbursed to the 1st respondent.

3) Revision petitioner is directed to surrender in the trial Court to undergo the modified sentence, failing which the learned Magistrate shall issue non bailable warrant forthwith against the revision petitioner.

Crl.R.P. is disposed of as above.

P.D. RAJAN, JUDGE.

acd

