

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

Crl.Rev.Pet.No. 208 of 2007 ()

**Crl.Appeal No. 200/2005 of SESSIONS COURT (ADHOC)-II, MANJERI
CC 310/2004 of C.J.M.COURT,MANJERI**

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**THEKKEDATH INDIRA DEVI, D/O. UNNICHYOI,
SWEEPER, AGED 48 YEARS, MANJERI MUNICIPALITY
MANJERI.**

BY ADV. SRI.VINOD VALLIKAPPAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT/STATE:

- 1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.**
- 2. SANTHOSH BABU, S/O. KUNHIRAMAN,
"VAISAKH", AMBALAPADI, KARUVAMBRAM
MALAPPURAM.**

R, BY ADV. PUBLIC PROSECUTOR SMT.MADHUBEN M.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30-
03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Imp

P.D.RAJAN,

Crl.R.P.No.208 of 2007

Dated this the 30th day of March, 2015

ORDER

The accused in C.C.No.310/2004 on the file of the Chief Judicial Magistrate Court, Manjeri, who was convicted under Section 138 of the Negotiable Instruments Act (hereinafter called 'the N.I. Act' for short) is the revision petitioner. The allegation against the revision petitioner is that, on 3.7.1999 she borrowed a sum of Rs.1 lakh from the second respondent and in discharge of that liability, she gave Ext.P1 cheque on condition that, she will repay the amount as and when required by the second respondent. When Ext.P1 was presented for encashment, it was dishonoured for the reason 'account closed'. On getting Ext.P2 Memo, the second respondent issued a lawyer notice, which was returned as 'unclaimed'. In that circumstance the above complaint was filed in the trial court.

2. To prove the offences, the second respondent was examined as PW1. His documents were

marked as Exts.P1 to P8. The incriminating circumstances brought out in evidence was denied by him while being questioning her. The revision petitioner examined as DW1. The learned Magistrate convicted the accused, against that, she preferred Crl.Appeal.No.200/2005 before the Court of Sessions, Manjeri, where the conviction passed by the trial court was confirmed, but modified the sentence.

3. The revision petitioner contended that, the notice was issued to the revision petitioner not in her residential address. On the other hand, it was issued in her employment address. Therefore, non service of the notice amounts to an illegality. The learned counsel appearing for the second respondent strongly resisted the above arguments and contended that, there was proper service.

4. I have given thoughtful consideration to the argument advanced by both sides. The allegation of the second respondent was that, the revision petitioner borrowed a sum of Rs.1 lakh and in discharge of that liability, she issued Ext.P1 cheque. When it was presented for encashment, it was dishonoured for 'account closed'.

Ext.P2 is the dishonour memo and Ext.P3 is the letter issued from the second respondent's bank. After dishonour of Ext.P1 cheque, the lawyer notice was issued. Ext.P4 is the copy of the lawyer notice. Ext.P5 is the Postal receipt, which was returned as unclaimed. Ext.P6 is the unclaimed envelope. Ext.P7 is the extract of the ledger and Ext.P8 is the extract of the cheque return register.

5. It is clear from the evidence that, after the presentation of the cheque, the second respondent has to make a demand for the payment of the said cheque amount, by giving a notice to the revision petitioner within a statutory period as stated under Section 138(b) of the N.I. Act. After the receipt of the notice, if revision petitioner fails to make payment of the said amount, to the second respondent, within the statutory period the offence stated under Section 138 will be automatically attracted. The only case of the revision petitioner was that, the lawyer notice was issued in her official address. Therefore, there is no proper service. DW1 was examined in this context and her contention was rejected by the courts below. Therefore, it is presumed that, when the notice was sent in the correct address, and it was

returned as unclaimed, it is to be presumed that, there is a proper service. In the absence of any contra-evidence, the contentions put forward by the revision petitioner is only to be rejected. The conviction of the revision petitioner under Section 138 of the N.I. Act, which was confirmed by the appellate court is only to be confirmed.

There is no merit in this revision petition and it is dismissed accordingly.

Sd/-
P.D.RAJAN
JUDGE

VS

/TRUE COPY/

PA TO JUDGE