IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

Crl.Rev.Pet.No. 1014 of 2006 ( )

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 42/2004 of III ADDL.SESSIONS COURT KOZHIKODE DATED 30-08-2005
AGAINST THE JUDGMENT IN CC 264/2002 of JUDICIAL FIRST CLASS MAGISTRATE I,PERAMBRA DATED 16-12-2003

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

T.K.NARAYANAN,
S/O.CHEKKINI, AGED 32 YEARS, MOTTANTHARA HOUSE
KOZHIKODE DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

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1. THOMAS JOHN,
S/O.N.M.JOHN, NEDIYA PALAKKAL HOUSE, CHIRAKKAD.P.O
ATHIYODI, VATTACHIRA, KOZHIKODE.

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

R2, BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

acd

P.D. RAJAN, J.

Crl. R.P.No.1014 of 2006

Dated this the 6th day of October, 2015

ORDER

Revision petitioner, who is the appellant in Crl. Appeal No.42/2004 of III Additional Sessions Judge, Kozhikode, 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.264/2002 of Judicial First Class Magistrate-I, Perambra u/s.138 of the N.I. Act. He was convicted and sentenced to rigorous imprisonment for three months and to pay compensation of ₹40,000/- u/s.357(3) Cr.P.C. , in default simple imprisonment for three months.

2. The complainant's case in the trial Court was that

on 15.1.2001 the accused borrowed a sum of ₹40,000/- and in discharge of that debt, he issued Ext.P1 cheque. When Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient. He demanded the due amount by a giving a notice in writing. Even after that notice, there was no repayment. In the circumstances, he filed the above complaint.

3. During trial, the complainant was examined as PW1 and his documents were marked as Exts.P1 to P4. He was questioned u/s.313 Cr.P.C. He did not adduce any defence evidence. After analysing the evidence on record, the trial Court convicted the accused. In the circumstances, the accused preferred the above appeal, in which the conviction was confirmed and dismissed the appeal. Being aggrieved by that, the accused approached this Court with this revision petition.

4. The learned counsel appearing for the revision petitioner submits that the sentence imposed by the trial Court is too harsh and some leniency may be shown in sentence. The learned Public Prosecutor has no objection in the above submission.

5. The complainant's case in the trial Court was that the revision petitioner borrowed a sum of ₹40,000/- from him and in discharge of that debt, he issued Ext.P1 cheque. When Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient. Ext.P2 is the dishonour memo. The 1st respondent/complainant issued a lawyer notice. Ext.P3 is the copy of the lawyer notice and Ext.P4 is the postal receipt. Notice was returned. Ext.P5 is the notice returned. There was no payment by the revision petitioner. A perusal of Ext.P2 shows that the cheque was

dishonoured for the reason of funds insufficient. 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.

6. When complainant proves the existence of a legally enforceable debt, the presumption under Section 139 of the Negotiable Instruments Act starts operating and burden shifts to the accused. 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".

Apex Court in **T. Vasanthakumar** v. **Vijayakumari** [(2015) 8 SCC 378] held as follows:

> "Therefore, in the present case since the cheque as well as the signature has been accepted by the accused-respondent, the presumption under

> Section 139 would operate. Thus, the burden was on the accused to disprove the cheque or the existence of any legally recoverable debt or liability. To this effect, the accused has come up with a story that the cheque was given to the complainant long back in 1999 as a security to a loan; the loan was repaid but the complainant did not return the security cheque. According to the accused, it was that very cheque used by the complainant to implicate the accused. However, it may be noted that the cheque was dishonoured because the payment was stopped and not for any other reason. This implies that the accused had knowledge of the cheque being presented to the bank, or else how would the accused have instructed her banker to stop the payment. Thus, the story brought out by the accused is unworthy of credit, apart from being unsupported by any evidence.

Here, the issuance of cheque was admitted by the revision petitioner as also the signature in the cheque. Therefore, a presumption u/s.139 of the N.I. Act can be drawn in this case. No rebuttal evidence has been adduced by the revision petitioner. Therefore, the conviction u/s.138 of the N.I. Act is confirmed.

7. Considering the nature of offence and the

character of the offender, I modify the sentence as follows:

The revision petitioner is sentenced to imprisonment till rising of the Court and to pay compensation of ₹40,000/- u/s.357(3) Cr.P.C., in default of payment of compensation, simple imprisonment for three months. The revision petitioner is directed to surrender in the Judicial First Class Magistrate-I, Perambra forthwith to undergo the modified sentence, failing which the learned Magistrate is directed to issue non bailable warrant against the revision petitioner.

Criminal Revision Petition is disposed of as above.

P.D. RAJAN, JUDGE.

acd