

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE P.D.RAJAN**

**THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937**

**Crl.Rev.Pet.No. 755 of 2005 (D)**  
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**AGAINST THE JUDGMENT IN CRL.APPEAL 845/2003 of ADDL. SESSIONS JUDGE,  
NORTH PARAVUR**

**AGAINST THE JUDGMENT IN CC 310/2000 of J.M.F.C.-I, ALUVA**  
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**REVISION PETITIONER(S)/APPELLANT/ACCUSED:**  
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**P.S.RAJEEV,  
PULIMUTTATH PARAMBIL,  
PERUMBAVOOR ROAD,  
ALUVA.**

**BY ADVS.SRI.MATHEWS K. PHILIP  
SRI.RAJIV NAMBEESAN**

**RESPONDENT(S)/RESPONDENTS/COMPLAINANT:**  
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**1. P.M.FZAL,  
GRAND STORES,  
K.A.P.COMPLEX,  
R.S.ROAD, ALUVA.**

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

**R2 BY PUBLIC PROSECUTOR SRI. N. SURESH**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 03-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**STK**

**P.D. RAJAN, J.**

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**Crl.R.P.755 of 2005**  
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**Dated this the 3<sup>rd</sup> day of September, 2015**

**ORDER**

Revision petitioner is the appellant in Crl. Appeal 845/2003 on the file of Additional Sessions Court, North Paravur challenges the judgment confirming the conviction under Section 138 of the Negotiable Instrument Act (hereinafter referred to as 'Act'). He was accused in C.C.310/2000 of the Judicial First Class Magistrate-1, Aluva convicted and sentenced to imprisonment for 5 months and a fine of Rs.88,860/- as compensation under Section 357(3) Cr.P.C., in default, simple imprisonment for 6 months. Against that judgment, he preferred the above appeal. The revision petitioner is the accused and the first respondent is the complainant in the trial court.

2. The allegation in the case was that, revision petitioner borrowed a sum of Rs.88,859/- and in discharge of that liability, he issued Ext.P1 cheque. When it was presented for encashment, the cheque was dishonoured

for the reason of funds insufficient. He made a demand for the due amount by giving a notice in writing. Even after that notice, there was no repayment. In the circumstance, the above complaint was filed in the trial court.

3. To prove the offence, first respondent was examined as PW1 and his documents were marked as P1 to P5. The incriminating circumstances brought out in evidence were denied by the revision petitioner while questioning him. He was examined as DW1 and Ext.D1 was marked in support of his defence. The trial court after analyzing the evidence, convicted the revision petitioner. The appellate court confirmed the conviction of the trial court. In the circumstance, he approached this court with this revision petition.

4. After filing this revision petition, this court directed the petitioner to give notice to first respondent. Even after specific direction, no steps were taken and no notice was given to the first respondent. Today, when the matter came up for hearing, the learned counsel

appearing for the revision petitioner submitted that, there was illegality committed by the courts below, five months imprisonment was granted without considering the settled legal principles. Therefore, the revisional jurisdiction may be invoked for rectifying the above illegality.

5. While exercising revisional jurisdiction, this court can examine the records of the inferior criminal courts for the purpose of satisfying itself to the correctness, legality or propriety of the findings. The apex court in **Pratap V. State of U.P. 1973 SCC (Crl.) 496** held that:

“The object of conferring revisional power on the High Court is to clothe the highest court in a state with a jurisdiction of general supervision and superintendence in order to correct the grave failure or miscarriage of justice arising from the erroneous or defective orders. The error or a defect may arise from the misconception of law, irregularity of procedure, misreading of evidence, misapprehension or misconception about law or facts, mere perversity or undue hardship of leniency.”

6. According to Section 138 of the Negotiable Instruments 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. 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 within the statutory period on the date of receipt of information from the bank regarding the return of the cheque as unpaid.

7. To prove the allegation, first respondent was examined as PW1 and his evidence shows that Ext.P1 was issued in discharge of a debt. When it was presented for

encashment, it was dishonoured for the reason 'funds insufficient'. Ext.P2 is the dishonour memo. Ext.P3 is the notice. Ext.P4 is the postal receipt. Ext.P5 is the acknowledgment card. There was no payment. Ext.P2 shows that Ext.P1 was dishonoured for the reason of funds insufficient. The trial court was of the view that when the cheque was dishonoured for the reason of funds insufficient, a presumption under Section 139 of the Negotiable Instrument Act will come in favour of the holder of the cheque. PW1 in his evidence deposed that Ext.P1 was issued in discharge of a debt.

8. Section 139 of the Negotiable Instruments 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”.

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. A three Judge bench of the Apex Court in **Rangappa V. Sri Mohan (2010(11) SCC 441)** held as follows:-

“The presumption mandated by Section 139 includes a presumption and there exists a legally enforceable debt or liability. This is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the respondent complainant”.

9. The revision petitioner was examined as DW1 in the trial court. He produced Ext.D1 pass book. The trial court was of the opinion that, Ext.D1 is not sufficient to rebut the presumption available under Section 139 of the Negotiable Instrument Act and that view was confirmed by the appellate court. When revision petitioner fails to discharge his initial burden to rebut the presumption, and admits his signature in the cheque, I am of the opinion that he failed to rebut the presumption under Section 118

and 139 of the N.I. Act. Both courts appreciated that position and convicted the revision petitioner, I find no illegality.

10. The learned counsel submitted that the sentence imposed by the trial court is too harsh. In **M/s.Target Overseas Exports Pvt. Ltd. V. A.M. Iqbal (2005 Cri.L.J.1931)** this Court held that, sentence to undergo imprisonment till the rising of the court and compensation under Section 357(3) Cr.P.C. is sufficient to meet the ends of justice.

In the result, the conviction under Section 138 of the N.I. Act is confirmed and the revision petitioner is sentenced to imprisonment till rising of court and pay compensation of Rs.88,860/- under Section 357(3) Cr.P.C., in default of compensation, simple imprisonment for six months. If the compensation is recovered, it shall be disbursed to the first respondent. The revision petitioner is directed to surrender before First Class Judicial Magistrate-I, Aluva within 30 days from today to undergo the sentence, failing which, Judicial First Class Magistrate

III, Palakkad shall issue Non-bailable Warrant against the accused and this revision petition is disposed as above.

STK

Sd/-  
**P.D. RAJAN,**  
**JUDGE**

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P.A. TO JUDGE