

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

Cr1.Rev.Pet.No. 1248 of 2006 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO.6/2005 of ADDL.DISTRICT COURT,
KOZHIKODE DATED 09-01-2006

AGAINST THE JUDGMENT IN CC 192/2003 of J.M.F.C.-II (MOBILE) KOZHIKODE
DATED 07-12-2004

REVISION PETITIONER(S) /APPELLANT/ACCUSED:

VASUDEVAN P.P., AGED 58 YEARS,
S/O. KANARAN, PONNADIPARAMBATH HOUSE, ELATHUR VILLAGE
MAVOOR DESOM, P.O.ERANHIKKAL, KOZHIKODE.

BY ADV. SRI.P.K.JOSE

RESPONDENT(S) /RESPONDENT/COMPLAINANT:

1. K.ASOKAN, AGED 55 YEARS, S/O. CHOYI,
VADAKKEDATHKANDI HOUSE, P.O.EDAKKAD, KOZHIKODE.

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

BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 07-09-2015, ALONG WITH CRRP. 1264/2006 & CON.CASE
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

acd

P.D. RAJAN, J.

Crl. R.P.Nos.1248, 1264 & 1265 of 2006

Dated this the 7th day of September, 2015

ORDER

The revision petitioner, who was the appellant in Crl.Appeal Nos.6/2005, 7/2005 and 8/2005 on the file of Sessions Court, Kozhikode, challenges the judgment of concurrent finding of conviction u/s.138 of the Negotiable Instruments Act (hereinafter referred to as N.I. Act). He was the accused in C.C.Nos.192/2003, 193/2003 and 194/2003 of Judicial First Class Magistrate-II (Mobile), Kozhikode and convicted u/s.138 of the N.I. Act and sentenced to simple imprisonment for five months and to pay a sum of ₹25,000/- as compensation u/s.357(3) Cr.P.C., each, in default of payment of compensation imprisonment for two

months, which was modified in the above Criminal Appeals as imprisonment till rising of the Court and to pay compensation of ₹25,000/- u/s.357(3) Cr.P.C., in default simple imprisonment for two months.

2. The facts necessary for the indictment were that the revision petitioner borrowed a sum of ₹1 lakh from the 1st respondent. In discharge of that debt, the revision petitioner issued four cheques to the 1st respondent. One cheque was encashed. Remaining three cheques were for ₹25,000/- each. Ext.P1 series are the cheques dated 10.5.2003, 3.6.2003 and 21.4.2003 for ₹25,000/- each. When those cheques were presented for encashment, they were dishonoured for the reason of funds insufficient. Ext.P2 series are the dishonour memos. The 1st respondent sent a lawyer notice to the revision petitioner. Ext.P3 series are the lawyer notices. Ext.P4 series are the postal receipts and Ext.P5 series are the

acknowledgment cards. Even though the 1st respondent sent lawyer notices, there was no repayment from the side of the revision petitioner. In the above circumstances, the above complaints were filed in the trial Court.

3. To prove the offence, the complainant was examined as PW1 and his documents were marked as Exts.P1 series to Ext.P5 series. The incriminating circumstances brought out in evidence were denied by the revision petitioner, while questioning him. The revision petitioner was examined as DW1 and Ext.D1 was marked on his side. The trial Court, after sifting and weighing the evidence on record, convicted the revision petitioner. Hence, he filed the above Crl. Appeals.

4. After filing this revision petition, this Court directed the revision petitioner to take steps to issue notice to the 1st respondent. On 21.7.2015, the learned counsel sought time to contact the party. Hence, the case

was posted after three weeks. Subsequently, on 30.8.2015, the Registry was directed to issue notice to the revision petitioner by speed post. Today, when the matter came up for hearing, the order of the Judicial First Class Magistrate Court-II (Mobile), Kozhikode was handed over by the learned Public Prosecutor. From the order, it is clear that the accused surrendered before the trial Court on 28.6.2006 and undergone the sentence of imprisonment till rising of Court and paid ₹25,000/- towards compensation in three criminal complaints. In the circumstances, the registry is directed to enquire about the matter to the concerned Magistrate and posted the case after lunch.

5. Accordingly, the Registry has verified the matter through Chief Judicial Magistrate, Kozhikode. It was reported that in all three cases, the accused was surrendered before Court and undergone imprisonment till

rising of the Court and paid ₹25,000/- each towards compensation as directed by the appellate Court. Accordingly, I have verified the judgment of the trial Court by invoking the revisional jurisdiction. The revisional jurisdiction is supervisory jurisdiction to find out the illegality, irregularity in the order or sentence or proceedings of the Court below. The revisional jurisdiction of the High Court is entirely discretionary and it can be used for the purpose of satisfying the correctness, legality or propriety of the finding and sentence or order of the courts below.

6. According to PW1, Ext.P1 series cheques (3 in numbers) were issued in discharge of a debt of ₹75,000/-, containing ₹25,000/- each, which were dishonoured for the reason of funds insufficient. Ext.P2 series (3 in numbers) are the dishonour memos. Ext.P2 series shows that the cheques were dishonoured for the

reason of funds insufficient. PW1 sent a lawyer notice to the accused and demanded the amount. Ext.P3 series are the copies of the lawyer notice. Ext.P4 series are the postal receipts. Ext.P5 series are the acknowledgment cards. Analysing the evidence of PW1 and Ext.P1 series to Ext.P2 series, it is clear that the cheques were dishonoured for the reason of funds insufficient. 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".

7. DW1 deposed that he borrowed only ₹25,000/- from PW1, the 1st respondent, at that time, four signed

cheques were issued as security to him. Out of those cheques, one cheque was encashed and the remaining cheques were returned by the 1st respondent. But, the above evidence is not sufficient to rebut the presumption u/s.139 of the N.I. Act. On the basis of oral testimony of PW1, the trial Court took a view that presumption u/s.118 of the N.I. Act with regard to the consideration will automatically be available in favour of PW1. I do not find any illegality in the above finding of the trial Court. Therefore, there is no merit in these revision petitions and they are dismissed accordingly.

P.D. RAJAN, JUDGE.

acd

