

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

Cr1.Rev.Pet.No. 1020 of 2005 ()

AGAINST THE JUDGMENT IN CRA 325/2003 of III ADDITIONAL SESSIONS COURT
(ADHOC), FAST TRACK COURT NO.1, THRISSUR DATED 10-10-2004

AGAINST THE JUDGMENT IN ST 1559/1999 of J.M.F.C., KODUNGALLUR
DATED 30-04-2003

REVISION PETITIONER(S)/APPELLANT/ACCUSED.:

VIJAYAN
SANKARAM PONATH HOUSE, PONNMVEETIL LANE
PATTURAIKKAL, THRISSUR.

BY ADV. SRI.E.C.BIJU

RESPONDENT(S)/RESPONDENTS.:

-
1. RAJAN, S/O. BALAKRISHNAN,
KOZHIPARAMBIL HOUSE, EDAMUTTOM, THRISSUR.
 2. THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 18-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.1020 of 2005

Dated this the 18th day of August, 2015

ORDER

The revision petitioner challenges the judgment in Crl.Appeal No.325/2003 of III Additional Sessions Judge, (Adhoc) Fast Track Court-I, Thrissur for offence punishable u/s.138 of the Negotiable Instruments Act (hereinafter referred to as 'N.I. Act'). He was convicted in S.T.No.1559/1999 of Judicial First Class Magistrate, Kodungallur u/s.138 of N.I.Act and sentenced to undergo imprisonment for 15 days and directed to pay compensation of ₹42,000/-, in default of payment of compensation, simple imprisonment for three months. Against that, he preferred the above criminal appeal, in which the appellate Court

modified the sentence and the revision petitioner was sentenced to undergo imprisonment till rising of the Court and directed to pay compensation of ₹42,000/-, in default, simple imprisonment for one month.

2. The brief facts under challenge are that on 18.7.1999, the revision petitioner borrowed a sum of ₹40,000/- from the 1st respondent and in discharge of that debt, Ext.P1 cheque was issued. When Ext.P1 was presented for encasement, it was dishonoured for the reason of 'funds insufficient'. The 1st respondent issued a lawyer notice. Even after accepting that notice, there was no repayment of the due amount by the revision petitioner. Hence, the 1st respondent filed a complaint in the trial Court.

3. To prove the allegation, the 1st respondent was examined as PW1 and his documents were marked as

Exts.P1 to P6. The incriminating circumstances brought out in evidence were denied by the revision petitioner, while questioning him u/s.313 Cr.P.C. He did not adduce any defence evidence. He examined DW1 and DW2 in support of his defence. The trial Court, after analysing the oral and documentary evidence, convicted the revision petitioner.

4. After filing this revision petition, this Court directed to give notice to the 1st respondent. Even after specific direction, there was no response from the side of the revision petitioner. Process not filed. Again on 13.8.2015, no representation from the side of the revision petitioner, hence the case was posted for disposal on 17.8.2015.

5. The power of the revisional jurisdiction of the High Court in criminal cases is narrower and limited than

appellate power and it cannot be invoked as of right as in the case of appellate jurisdiction. The object of conferring revisional power is to clothe the High Court with a jurisdiction of the general supervision in order to correct grave miscarriage or failure of justice arising from erroneous or defective orders. While exercising this power, it is justified only to set right grave failure of justice and not merely to rectify every error. The fact that the lower court has taken a wrong view of law or misapprehended the evidence on record cannot be a reason to interfere unless it has resulted in grave justice.

6. In the circumstances, I have considered whether there is any illegality in the findings of the Court below and perused documents. I have gone through the judgment of the courts below. PW1 is the defacto complainant in the Court below. His evidence shows that

Ext.P1 was issued in discharge of a debt. When it was presented for encasement, it was dishonoured for the reason 'funds insufficient'. When issuance of cheque was proved in discharge of a debt or liability, a presumption u/s. 139 of the N.I. Act can be drawn in favour of the holder of the cheque.

7. 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".

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".

Therefore, in the present case since the cheque as well as the signature has been accepted by the accused, the presumption under Section 139 would operate. Thus, the burden was shifted on accused to disprove the existence of any legally recoverable debt or liability.

8. In this context, I have considered whether there is any rebuttal evidence. DW1 and DW2 were examined in the trial Court. DW1 deposed that the amount was borrowed from PW1 through DW2. His case is that, when amount was borrowed from DW2, there was no debt or liability towards PW1, which was rejected by the Courts

below. Therefore, I do not find any illegality in the above findings of the Courts below. When there is no illegality or irregularity in the findings of the courts below, the conviction passed by the Courts below is confirmed. But, the Appellate Court sentenced the accused to undergo imprisonment till rising of Court and pay compensation of ₹42,000/- to the complainant. Considering the facts and circumstances of the case, I modify the sentence as follows:

The revision petitioner is sentenced to imprisonment till rising of Court and to pay a sum of ₹ 40,000/- as compensation u/s.357(3) Cr.P.C, in default of compensation, simple imprisonment for 3 months. If compensation is realised, it shall be disbursed to the complainant. The revision petitioner is directed to surrender before the trial Court within thirty days from today, failing which the

Judicial First Class Magistrate, Kodungallur trial Court is directed to issue Non Bailable Warrant against the revision petitioner.

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

P.D. RAJAN, JUDGE.

acd

