

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

Crl.Rev.Pet.No. 749 of 2007 ()

**AGAINST THE JUDGMENT IN CRL. APPEAL 253/2006 of ADDL. SESSIONS COURT
(ADHOC) FAST TRACK-III, PATHANAMTHITTA**

AGAINST THE JUDGMENT IN CC 572/2002 of J.M.F.C., THIRUVALLA

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**G.SASEENDRAN NAIR, AYILAM HOTEL,
THAKARAPARAMBU, VANCHIYOOR P.O., THIRUVANANTHAPURAM.
CORRECT ADDRESS: T.C.28/1580, HOTEL AYILLYAM,
KUNCHUVEEDU LANE, SREEKANTESWARAM, FORT PO,
THIRUVANANTHAPURAM.**

BY ADV. SRI.M.SREEKUMAR

RESPONDENT(S)/COMPLAINANT AND STATE:

- 1. SADIQU KASIM, KANJIRAMKALAYIL VEEDU,
THUKALASSERI MURI, THIRUVALLA VILLAGE.**
- 2. STATE OF KERALA, REPRESENTED 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 05-
10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.749 of 2007

Dated this the 5th of October, 2015

ORDER

This revision petitioner, who is the appellant in Criminal Appeal 253/2006 on the file of the Additional Sessions Judge, Fast Track-III, Pathanamthitta challenges the concurrent findings of conviction under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the 'N.I. Act'). He was accused in C.C. 572/2002 on the file of Judicial First Class Magistrate, Thiruvalla, convicted and sentenced to imprisonment for 6 months under Section 138 of the N. I. Act and pay a compensation of Rupees Two lakhs under Section 357(3) Cr.P.C., in default of payment of compensation, simple imprisonment for 3 months.

2. The complainant's case in the trial court was that on 13.09.2001, the accused issued a cheque for Rupees Two lakhs drawn on Indian Overseas Bank, Sreekandeswaram branch Trivandrum in discharge of a debt. When cheque was presented for encashment through Bank of Baroda, Thiruvalla, it was dishonoured for

the reason of funds insufficient. The complainant gave a notice in writing to the accused to repay the due amount. Even after the receipt of that notice, there was no repayment. In the circumstance, a complaint was filed in the trial court.

3. During trial, complainant 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 accused while questioning him. Ext.D1 was marked on the side of the accused. The trial court after analyzing the evidence, convicted the accused. Against that, he preferred Criminal Appeal 253/06, where the conviction was confirmed and the appeal was dismissed by the appellate court. Being aggrieved by that, he preferred this revision petition.

4. The learned counsel appearing for the revision petitioner submitted that there is a variation in the date mentioned in Ext.P1 cheque. Therefore, it amounts to a material alteration and no offence under Section 138 will attract against the revision petitioner.

5. In the light of the arguments, I have gone through the evidence adduced by PW1. The oral evidence of PW1 shows that Ext.P1 was issued in discharge of a debt. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. Ext.P2 is the cheque return memo. Ext.P3 is the intimation. Ext.P4 is the copy of the lawyer notice. Ext.P5 is the postal receipt. Ext.P6 is the postal acknowledgment card. On analyzing the evidence of Exts.P1 to P6, it is clear that cheque was dishonoured for the reasons of funds insufficient. Even though revision petitioner contended that there is a mistake in the date mentioned in Ext.P1, it is clear from Exts.P1 and P2 that cheque was dishonoured for the reason of funds insufficient and no reason stated with regard to any alteration in the date. When the cheque is dishonoured for the reason under Section 138 of the Negotiable Instrument Act, a presumption can be drawn in favour of the holder of the cheque.

6. When complainant proves that the cheque was received for the reasons stated under Section 138 of the

N.I. Act, 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”.

The only rebuttal evidence available is Ext.D1, the certified copy of the complaint in ST 791/03, which is not sufficient according to the facts of this case. The signature in Ext.P1 was admitted by the revision petitioner. In this circumstance, a presumption under Section 139 is drawn in favour of the holder of the cheque. 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.

7. The trial court considered all the aspects and convicted the revision petitioner. The appellate court also upheld the findings of the trial court. I find no illegality in the conviction passed by the courts below. The appellate court dismissed the appeal without interfering the sentence imposed by the trial court and trial court sentenced the revision petitioner to undergo simple imprisonment for 6 months under Section 138 of the N.I. Act and pay a compensation of Rupees Two lakh under Section 357(3) Cr.P.C., which needs interference. The facts and circumstances shows that the sentence imposed by the trial court is harsh and I set aside the sentence and modified it as follows.

The revision petitioner is sentenced to imprisonment till rising of court under Section 138 of the N.I. Act. He is

sentenced to pay a compensation of Rupees Two lakh under Section 357(3), in default of payment of compensation, simple imprisonment of three 3 months. If compensation amount is realized, it shall be disbursed to the 1st respondent. The revision petitioner submitted that he had already deposited Rupees One lakh and that amount can be adjusted in the final compensation. Hence, revision petitioner is directed to deposit the balance amount within two months, failing which the learned Magistrate is directed to issue Non-bailable Warrant to undergo the modified sentence.

STK

Sd/-
P.D. RAJAN,
JUDGE

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P.A. TO JUDGE