IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

Crl.Rev.Pet.No. 1559 of 2006 ( )

AGAINST THE JUDGMENT IN CRA 704/2004 of ADDL. SESSIONS COURT, KOZHIKODE

AGAINST THE JUDGMENT IN CC 41/2003 of J.M.F.C.-III, KOZHIKODE

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

K.K.RAMACHANDRAN,
S/O. KANDAKUTTY, RAMAPURI,
NEAR NADAMMAL BHAGAVATHI
TEMPLE, PUTHIYARA P.O., CHALICUT-4.

BY ADV. SRI.SUNNY MATHEW

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE::
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1. P.CHANDRAN S/o.KELUKUTTY NAIR,
   AYANIPPATTA, THONDAYAD, KOZHIKODE DISTRICT.

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

R2 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 13-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

STK

P.D. RAJAN, J.

Crl. R. P. No.1559 of 2006

Dated this the 13th day of August, 2015

ORDER

The revision petitioner challenges the judgment in Crl. Appeal 704/2004 of the First Additional Sessions Judge, Kozhikode under Section 138 of the Negotiable Instruments Act. He was convicted by the trial court in CC No.41/03 under Section 138 of the negotiable Instrument Act and sentenced to under go simple imprisonment for 6 months and to pay a fine of Rs.70,000/- under Section 357 (3) Cr.P.C., in default of payment of compensation, simple imprisonment for 3 months. The above sentence was modified in the above appeal and the revision petitioner was sentenced to imprisonment till rising of court and pay a compensation of Rs.70,000/-. In this circumstance, the revision petitioner approached this court.

2. The facts gave rise to the revision petition were that on 19.01.01, revision petitioner borrowed a sum of Rs.60,000/- from the first respondent and in discharge of

that debt, he gave Ext.P1 cheque. When it was presented for encashment, it was dishonoured for the reason 'funds insufficient'. In the circumstance, first respondent gave a notice to the revision petitioner and after notice, there was no repayment. Hence, the above complaint was filed in the trial court. The first respondent was examined PW1, to prove the offence, his documents were marked as P1 to P4 (a) and (b). The incriminating circumstances brought out in evidence were denied by the revision petitioner while questioning him. The trial court after analysing the evidence, convicted the revision petitioner.

3. After filing this petition, this court directed the revision petitioner to give notice to first respondent. But the notice was not given to the first respondent. The second respondent was represented through Public Prosecutor. In the circumstance, I heard both sides.

4. 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. PW1 deposed that Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient. Ext.P2 is the dishonour memo. Ext.P3 is the intimation. Ext.P4 is the copy of the lawyer notice. Ext.P4(a) is the postal receipt and Ext.P4(b) is the postal acknowledgment. There was no payment after receipt of the above notice. When cheque was dishonoured for the reason of funds insufficient, it is presumed that the Ext.P1 was issued in discharge of a debt or liability. Therefore, the presumption can be drawn in favour of the holder of the cheque .

5. 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 Ext.P1 was dishonoured for the reason of funds insufficient, a presumption provided under Section 139 of N.I.Act can be drawn in favour of the first respondent. Apex Court in **Mandvi Co-operative Bank Ltd V. Nimesh B Thakore** (AIR 2010 SC 1402) held that a rebuttable presumption is created under Section 139 that cheque was issued by the drawer in discharge of any debt or liability owned by him to its holder.

The trial court and the appellate court considered this matter and no rebuttable evidence has been produced in the courts below. Therefore, the lower court was of the view that Ext.P1 was issued in discharge of a debt and convicted the revision petitioner, I find no illegality in the above judgments. Therefore, the revision petitioner was sentenced to imprisonment till rising of court and compensation of Rs.70,000/- under Section 357(3) Cr.P.C., in default, simple imprisonment for 3 months. I find no illegality in the above judgment, there is no merit in this revision petition and it is is dismissed accordingly.

Sd/-
P.D. RAJAN,
JUDGE

STK

//TRUE COPY//

P.A. TO JUDGE