

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. 1250 of 2005 ()

AGAINST THE JUDGMENT IN CRA 391/2003 of II ADDL. SESSIONS COURT, PALAKKAD

AGAINST THE JUDGMENT IN CC 4/2002 of J.M.F.C.-III, PALAKKAD

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

**P.SANKARANARAYANAN
S/o.PADMANABHAN NAIR,
TELECOM EMPLOYEE, (EMPLOYEE NO.2417),
OFFICE OF THE S.D.E. (TT),
CENTRAL TELEGRAPH OFFICE,
PALAKKAD.**

**BY ADVS.SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ**

RESPONDENT(S)/COMPLAINANT & STATE::

- 1. WEIZMAN HOMES LTD.,
REPRESENTED BY ITS AUTHORISED OFFICER,
V. PRADEEP, S/O. K.K. VASUDEVAN.**
- 2. STATE OF KERALA, REPRESENTED BY
THE 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.1250 of 2005

Dated this the 13th day of August, 2015

ORDER

The revision petitioner challenges the judgment in Criminal Appeal No.391/2003 of the IInd Additional Sessions Judge, Palakkad for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the 'Act'). He was convicted by the Judicial First Class Magistrate-III, Palakkad under Section 138 of the N. I. Act and sentenced to imprisonment for one month and to pay a compensation of Rs.10,000/- under Section 357(3) Cr.P.C., in default of compensation, simple imprisonment of one month. The revision petitioner is the accused and the first respondent is the de-facto complainant in the trial court.

2. The facts necessary for indictment were that the revision petitioner purchased a T.V. set from the first respondent and towards the discharge of that debt, he issued a cheque for Rs.17,630/-. When the cheque was presented for encashment, it was dishonoured for the

reason of funds insufficient. First respondent gave a lawyer notice to the revision petitioner, even after that there was no repayment. Hence, the complaint filed in the trial court.

3. To prove the offence, first respondent examined PW1 and produced Ext.P1 to P5 as documentary evidence. The incriminating circumstances brought out in evidence were denied by the revision petitioner while questioning him. He contended that he purchased a TV from the first respondent and given 10 cheques, of which 3 cheques were blank cheques, by using that 3 cheques, three cases were filed against him. The two are pending C.C.460/2000 and C.C.476/2000 in the court below. Misappropriating one of the cheque leaves, he foisted this case.

4. After filing this revision petition this court directed the petitioner to give notice to the first respondent. Even after specific directions, no steps were taken. In this circumstance, I heard the counsel appearing for the

revision petitioner. He submitted that appreciation of evidence by the court below was perverted, which result in gross miscarriage of justice. The lower court ought to have found that Ext.P1 was issued not in discharge of a debt.

5. 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 is the power of attorney holder of the first respondent. He deposed that Ext.P1 was issued in discharge of a debt. Ext.P2 is the dishonour memo. Ext.P3 is the lawyer notice and Ext.P4 is the acknowledgment card and P5 is the Power of Attorney. When Ext.P1 was dishonoured for the reason of funds insufficient a statutory presumption under Section 139 shall be drawn in favour of the holder of the cheque and trial court has drawn such presumption.

6. 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”.

The apex court in **Hiten P. Dalal v. Bratindranath Banerjee ((2001) 6 SCC 16)** which was followed in **Narayana Menon v. State of Kerala 2006 (3) KLT**

404, it was held that the presumption in 139 of the Negotiable Instruments Act is rebuttable presumption.

7. 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 on the accused to rebut the presumption of the existence of any legally recoverable debt or liability. No rebuttal evidence has been adduced by the revision petitioner, therefore, I find no illegality in the judgment passed of the courts below. The appellate court directed the revision petitioner to pay compensation of Rs.10,000/- and sentence of imprisonment awarded also commensurates with the common offence committed. In the circumstance, I modify the sentence as follows.

The revision petitioner is sentenced to imprisonment till rising of court and pay a compensation of Rs.10,000/- (Rupees Ten thousand only) under Section 357(3) Cr.P.C., in default of payment of compensation, simple imprisonment for one month and this revision petition is

disposed of accordingly. The revision petitioner is directed to surrender before trial court 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.

STK

Sd/-
P.D. RAJAN,
JUDGE

//TRUE COPY//

P.A. TO JUDGE