

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

Crl.Rev.Pet.No. 1283 of 2007 ()

CRL.A 418/2003 of II ADDL.SESIONS COURT, TRIVANDRUM DATED 31-10-2006
CC 484/1998 of JMFC-V, TRIVANDRUM

REVISION PETITIONER(S)/2ND RESPONDENT/COMPLAINANT :

**R.V.SANAL KUMAR, PRATHIBHA,
T.C.30/982, KAVARADI ROAD, PETTAH
THIRUVANANTHAPURAM.**

**BY ADVS.SRI.SUBHASH CYRIAC
SRI.M.R.SASITH**

RESPONDENT(S)/1ST RESPONDENT & APPELLANT/ACCUSED :

- 1. STATE OF KERALA REPRESENTED BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**
- 2. DR.REKHA KHAN, REKHAS,
HOUSING BOARD BUILDING, CHACKAI, THIRUVANANTHAPURAM.**

**R1 BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN
R2 BY SRI.BLAZE K JOSE**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
15-10-2015, ALONG WITH CRRP. 3400/2007, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:**

VS

P.D.RAJAN, J.

Crl.R.P.Nos.1283 & 3400 of 2007

Dated this the 15th day of October, 2015

ORDER

These revision petitions are preferred against the Crl.Appeal No.428/2003 on the files of IInd Additional Sessions Judge, Thiruvananthapuram, challenging the concurrent findings of conviction under Section 138 of Negotiable Instruments Act (hereinafter called 'the Act' for short).

2. The revision petitioner in Crl.R.P.No.1283/07 is the complainant in C.C.No.484/98 and the revision petitioner in Crl.R.P.No.3400/07 is the accused in C.C.No.484/98, on the file of Judicial First Class Magistrate Curt V, Thiruvananthapuram, filed under Section 138 of the Act. The accused was convicted and sentenced to undergo simple imprisonment for 6 months under Section 138 of the Act and to pay a compensation of Rs.75,000/- under Section 357(3) of the Code of Criminal Procedure, in default of payment of compensation, undergo simple

imprisonment for 3 months.

3. The complainant's case in the trial court was that the accused borrowed a sum of Rs.75,000/- from the complainant on 10.09.1997 and in discharge of that debt, he issued Ext.P1 cheque to the complainant. When it was presented for encashment, it was dishonoured for the reason 'funds insufficient'. The complainant demanded the amount by giving a notice in writing. It was returned and there was no repayment. In the circumstances, the above complaint was filed in the trial court.

4. During trial, complainant examined PW1 and his documents were marked as Exts.P1 to 4. 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 analysing the evidence, convicted the accused. Being aggrieved by that, he preferred an appeal as Crl.Appeal No.418/03 before the 2nd Addl.Sessions Judge, Thiruvananthapuram. The appellate court modified the

sentence passed by the trial court as imprisonment till rising of the court under Section 138 of the Act and also to pay compensation of Rs.25,000/- under Section 357(3) of the Code of Criminal Procedure and in default of payment of compensation, simple imprisonment for 2 months. Being aggrieved by that the complainant preferred Crl.R.P.No.1283/2007 and accused preferred Crl.R.P.No.3400/2007 before this Court.

5. The learned counsel appearing for the revision petitioner in Crl.R.P.No.3400/2007 contended that there is material alteration in Ext.P1 cheque, which was considered by this Court in an earlier occasion and remitted the case to the trial court for fresh consideration. But the trial court has not properly considered that aspect and convicted the accused.

6. The learned counsel appearing for the second respondent in Crl.R.P.No.3400/2007 is the revision petitioner in Crl.R.P.No.1283/2007 contended that without considering the cheque amount, a meagre amount was

granted as compensation. While modifying the sentence passed by the trial court, specific reason has to be stated by the appellate court. In the absence of any reason, the compensation awarded by the trial court is to be restored.

7. The specific case of the complainant, (who is the revision petitioner in Crl.R.P.No.1283/2007) is that the accused issued Ext.P1 cheque and when it was presented for encashment, it was dishonoured for the reason of funds insufficient. Ext.P1 is the cheque and Ext.P2 is the dishonour memo. Complainant issued a lawyer notice by demanding the amount. Ext.P3 series are the copy of the lawyer notice, postal receipt and returned notice. Ext.P4 series are the bank documents, which shows the transaction of the accused. Ext.P2 shows that when Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient. When a cheque was dishonoured for the reason stated under Section 138 of the Act, a presumption under Section 139 of the Act is drawn in favour of the holder of the cheque.

8. Section 139 of the 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”.

No rebuttal evidence in Ext.D1 has been adduced by the accused to rebut the presumption under Section 139 of the Act. The trial court relied upon the decisions rendered by the apex court in ***Beena v. Muniappan (AIR 2001 SC 2995)*** and ***Hiten P. Dalal v. Bratindranath Banerjee (AIR 2001 SC 3879)***. The trial court and the appellate court observed that Ext.D1 alone is not sufficient to rebut the presumption under Section 139 of the Act. Relied upon the decision ***Narayana Menon v. State of Kerala [2006 (3) KLT 404 (SC)]***.

9. Another contention raised by the learned counsel for the revision petitioner in Crl.R.P.No.3400/2007 is that there is material alteration in Ext.P1 which was not

considered by the trial court after remitting the matter to that Court. It is true that any material alteration of a negotiable instrument renders it void against any one who is a party there to at the time of making such alteration and does not consent there to, unless it was made in order to carry out the common intention of the original parties. Any alteration made by a stranger or without the knowledge of the other party amounts to a material alteration as per Section 87 of the Act. After remand of the case no expert opinion was obtained by the accused to show that there is material alteration. In the absence of such an evidence, the contention itself is not maintainable and I reject the contention.

10. The appellate court confirmed the conviction and modified the sentence to simple imprisonment till rising of the court under Section 138 of the Act and granted a compensation of Rs.25,000/- under Section 357(3) of the Code of Criminal Procedure, in default to undergo simple imprisonment for 2 months.

The sentence is purely discretion of the trial court, if any modification is made by the appellate court, specific reason has to be stated by the appellate court for such modification. Here no reasons are stated at the time of modifying the sentence, which needs interference, considering the facts and circumstances of the case and the cheque amount, the illegality committed by the appellate court is modified by invoking revisional jurisdiction and the sentence is modified as follows:

(a) The accused is sentenced to undergo imprisonment till rising of the court under Section 138 of the Act and she is sentenced to pay a sum of Rs.75,000/- (Rupees seventy five thousand only) under Section 357(3) of the Code of Criminal Procedure, in default of payment of compensation, simple imprisonment for 3 months.

(b) If the compensation is realized, it shall be disbursed to the complainant.

(c) The accused is directed to surrender in the
Judicial First Class Magistrate Court-V,

Thiruvananthapuram to undergo the modified sentence, failing which the Judicial First Class Magistrate Court-V is directed to issue non-bailable warrant against the accused forthwith and both revision petitions are disposed of as above.

Sd/-
P.D.RAJAN
JUDGE

VS

/TRUE COPY/

PA TO JUDGE