

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1551 of 2007 ()

**AGAINST THE JUDGMENT IN CRL. APPEAL 221/2005 of ADDITIONAL SESSIONS
COURT (ADHOC), PATHANAMTHITTA**

AGAINST THE JUDGMENT IN CC 612/1998 of J.M.F.C.-II,PATHANAMTHITTA

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**SAMUEL MATHAI, CHARIVUPARAMBIL HOUSE,
THEKKUTHODE MURI, THOMPAKULAM, THANNITHODE.**

**BY ADVS.SRI.S.MUHAMMED HANEEFF
SRI.R.KRISHNAKUMAR (CHERTHALA)**

RESPONDENT(S)/COMPLAINANT:

- 1. MATHAI VARKEY, PUTHIYATHU HOUSE,
THEKKUTHODE MURI, THUMPAKKULAM,
THANNITHODE,
PATHANAMTHITTA.**
- 2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

R2 BY PUBLIC PROSECUTOR SRI. N. SURESH

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27-
10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.1551 of 2007

Dated this the 27th of October, 2015

ORDER

The revision petitioner is the appellant in Crl. Appeal 221/05 on the file of the Addl. Sessions Judge, (Adhoc) Court-I, 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.612/98 on the file of the Judicial First Class Magistrate-II, Pathanamthitta and convicted for offence punishable under Section 138 of the N.I. Act and sentenced to imprisonment for 6 months and compensation of Rs.1,00,000/- under Section 357(3) Cr.P.C, in default, simple imprisonment for 3 months. Against that he preferred the above appeal, in which the conviction was confirmed and appeal is dismissed. Being aggrieved by that, he preferred this revision petition. The first respondent is the complainant in the trial court.

2. The complainant's case in the trial court is that, accused borrowed a sum of Rs.80,000/- and in discharge

of that liability he issued Ext.P1 cheque drawn on Thannithodu Service Co-operative Bank. When the cheque was presented for encashment, it was dishonoured for the reason of funds insufficient. The complainant demanded the due amount by giving a notice in writing to the accused, which was received by the accused and no repayment thereafter. In the circumstance, a complaint was filed in the trial court.

3. During trial, complainant was examined as PW1 and his documents were marked Exts. P1 to P6. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. DW1 was examined from the side of the accused. The trial court after sifting and weighing the evidence on record convicted the accused.

4. The learned counsel appearing for the revision petitioner contended that the sentence imposed by the trial court is too harsh, which was upheld by the appellate court. Hence, he requested to modify the sentence.

5. The first respondent was served with a notice.

There was no response from his side. I heard the Public Prosecutor also. The specific case of PW1 is that Ext.P1 was issued in discharge of a debt. When it was presented for encashment, it was dishonoured for the reason of amount not arranged. Ext.P2 is the intimation. He issued a lawyer notice demanding the due amount. Ext.P3 is the copy of the notice. Ext.P4 is the postal receipt. Ext.P5 is the acknowledgment card. Ext.P6 is the bank document. A perusal of Exts.P1 to P6 shows that cheque was dishonoured for the reason of funds insufficient. When cheque is dishonoured for the reason stated under Section 138 of the Negotiable Instruments 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 courts below considered the decisions of Apex court reported in **Hiten P. Dalal v. Bratindranath Banerjee (AIR 2001 SC 3879, Beena v. Muniappan (AIR 2001 SC 2995) and Narayana Menon v. State of Kerala 2006 (3) KLT 404 (SC)**. To rebut the presumption, DW1 was examined and Exts.D1 to D6 were marked from the side of the accused. But that evidence is not sufficient to rebut the presumption under Section 139 of the Negotiable Instrument Act and convicted the revision petitioner which was upheld by the appellate court. I find no illegality in the above conviction.

7. The learned counsel appearing for the revision petitioner submitted that, the sentence imposed by the trial court is too harsh. The trial court convicted the accused under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for 6

months and compensation of Rs.1,00,000/- under Section 357(3) Cr.P.C. Considering the facts and circumstances of the case, I modify the sentence as follows:

Revision petitioner is sentenced to imprisonment till rising of court under Section 138 of the N.I. Act and pay a compensation of Rs.80,000/- under Section 357(3) Cr.P.C., in default simple imprisonment for 3 months. The first revision petitioner shall appear before Judicial First Class Magistrate-II, Pathanamthitta to undergo the modified sentence, failing which the trial Magistrate shall issue non-bailable warrant forthwith.

This revision petition is partly allowed.

STK

//TRUE COPY//

P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE