

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1570 of 2007 ()

**AGAINST THE JUDGMENT IN CRL. APPEAL 183/2000 of ADDL. SESSIONS COURT
(ADHOC-I), THALASSERY**

AGAINST THE JUDGMENT IN CC 935/1997 of J.M.F.C.,THALASSERY

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**P. SETHULAKSHMI, D/O.SREEDHARAN,
10 ROOM LINES, ONDEN ROAD, BANK EMPLOYEE,
KANNUR, KANNUR TALUK, KANNUR DISTRICT.**

BY ADV. SRI.T.M.ABDUL LATHIEF

RESPONDENT(S)/COMPLAINANT:

**1. P. SREEDHARAN, S/O.APPA,
CHADAYANTAVIDE HOUSE, P.O.NETTOOR,
THALASSERY AMSOM,
KUNNATHU DESOM, THALASSERY-5.**

**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 29-
10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.1570 of 2007

Dated this the 29th of October, 2015

ORDER

The revision petitioner, who is the appellant in Crl. Appeal 183/2000 on the file of the Addl. Sessions Judge, Thalassery 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.935/95 on the file of the Judicial First Class Magistrate, Thalassery and convicted for offence punishable under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment for 6 months and pay a fine of Rs.5000/- in default, simple imprisonment for 3 months. Against that, he preferred the above appeal, in which the conviction was confirmed and sentence was modified. Being aggrieved by that, he preferred this revision petition.

2. The first respondent in this revision is the complainant in the trial court. The complainant's case in the trial court was that, on 8.5.97, the accused borrowed

a sum of Rs.75,000/- and in discharge of that debt, he issued Ext.P1 cheque. 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 payment thereafter. In the circumstance, a complaint was filed in the trial court.

3. During trial, complainant examined PW1 and PW2 and marked Exts. P1 to P6 as documentary evidence. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. DW1 to DW3 were examined from the side of the accused and marked Exts.D1 and D2. The court exhibit was marked as Ext.C1. The trial court after sifting and weighing the evidence on record convicted the accused.

4. Heard both sides. The learned counsel appearing for the revision petitioner contended that there was no signature in the Ext.P1 which will absolve the revision petitioner from his liability. When there is proper

authorization by putting the signature, it is true that, it is not a Negotiable Instrument.

5. The first respondent's case in the trial court was that accused revision petitioner borrowed a sum of Rs.75,000/- and in discharge of that debt, he issued Ext.P1 cheque. When the cheque was presented for encashment, it was dishonoured for the reason of funds insufficient. Ext.P2 is the dishonour memo. Ext.P3 is the memo issued from State Bank of India, Thalassery. First respondent issued a lawyer notice and Ext.P4 is the copy of lawyer notice. Ext.5 is the acknowledgment card. Ext.P6 is the extract of the ledger. PW2 supported the evidence of PW1 and stated that when Ext.P1 was presented in his office, it was dishonoured for the reason of funds insufficient. Ext.P2 was issued from his office. He categorically stated that revision petitioner is a staff in his bank. Analyzing the evidence PW1 and PW2 it is clear that when Ext.P1 was presented for encashment, it 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 under Section 139 of the Negotiable Instruments Act 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).**

7. To rebut the presumption under Section 139 of the Negotiable Instruments Act, revision petitioner

examined DW1 to DW3 and also produced Ext.D1 and D2. He disputed the signature in Ext.P1. DW1 is the accused himself and contended that no transaction with the first respondent. Her husband, DW2 borrowed some amount from first respondent and in discharge of that debt she issued a cheque and a blank stamp paper. Subsequently, he paid the entire amount. But they retained a cheque and subsequently put the signature in Ext.P1 and presented for encashment and foisted a false case. For proving this point, DW2 and DW3 were examined. Even though, these three witnesses were examined, nothing has been brought to show that Ext.P1 was not issued in discharge of a debt or liability. The specific case of DW1 is that, the cheque was issued to one Rubi, that point was also not proved. When revision petitioner disputed the signature in Ext.P1, the cheque was forwarded for the opinion of the handwriting expert. Ext.C1 is the report, in which it is admitted that the signature in Ext.P1 was signed by the revision petitioner himself. The trial court observed that the evidence of DW1 to DW3 are not

sufficient to rebut the presumption under Section 139, which was upheld by the appellate court. I find no illegality in the above judgment. Therefore, the conviction passed by the trial court, which was upheld by the appellate court under Section 138 of the N.I. Act are confirmed.

The appellate court modified the sentence of the revision petitioner and sentenced to imprisonment for till rising of court and pay a sum of Rs.50,000/- to the complainant as compensation, in default of payment of compensation, simple imprisonment for 3 months. I find no illegality in the above judgment of the appellate court and there is no merit in this revision and it is dismissed accordingly. The revision petitioner shall appear before Judicial First Class Magistrate Court, Thalassery to undergo the modified sentence, failing which the trial Magistrate shall issue non-bailable warrant forthwith.

STK

//TRUE COPY//

PA. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE