

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

Crl.Rev.Pet.No. 1507 of 2009 ()

AGAINST THE JUDGMENT IN CRL. APPEAL NO. 545/2007 of ADDL.SESIONS
COURT-I,MAVELIKKARA DATED 24-11-2008
AGAINST THE JUDGMENT IN ST 70/2007 of JUDICIAL FIRST CLASS MAGISTRATE
COURT-II, HARIPAD DATED 14-09-2007

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

SREEJAKUMARI, KATOOR VEETIL,
ERETHEKKUM MURI, EREZHA.

BY ADVS.SRI.V.G.ARUN
SRI.PRASAD CHANDRAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

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1. DHARUNEENDRAN, USHUS VEETIL,
MALAMEL MURI, KEERIKKADU VILLAGE.
 2. THE STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 13-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.1507 of 2009

Dated this the 13th day of October, 2015

ORDER

Revision petitioner, who is the appellant in Crl.Appeal No.545/2007 of Additional Sessions Court-I, Mavelikara, challenges the concurrent finding of conviction u/s.138 of the Negotiable Instruments Act (hereinafter referred to as the N.I. Act). She was the accused in S.T.No.70/2007 of Judicial First Class Magistrate-II, Haripad, she was convicted u/s.138 of the N.I. Act and sentenced to undergo simple imprisonment for one month and to pay compensation of ₹ 2,50,000/- u/s.357(3) Cr.P.C., in default simple imprisonment for three months.

2. The complainant's case in the trial Court is that the

accused borrowed a sum of ₹2,50,000/- from him and in discharge of that debt, he issued Ext.P1 cheque drawn on Bank of Baroda, Mavelikkara Branch. When it 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, but there was no repayment, even after receipt of the lawyer notice. Hence, the above complaint.

3. During trial, PW1 and PW2 were examined and Ext.P1 to P7 were marked as documentary evidence. The incriminating circumstances brought out in evidence were denied by the accused, while questioning her. She examined DW1 and DW2 and marked Exts.D1 and D2 in support of her defence. The trial Court convicted the accused and sentenced her, which was confirmed by the appellate Court. Being aggrieved by that, she preferred

this revision petition.

4. The learned counsel appearing for the revision petitioner contended that the 1st respondent failed to prove the alleged debt. The revision petitioner has no transaction with the 1st respondent. On the other hand, she had lost her cheque leaves and by misappropriating those cheque leaves, the 1st respondent foisted a false case. Ext.D1 statement of accounts shows that there was no amount in the account of the 1st respondent and he failed to prove the source of income.

5. The first respondent died and his legal heirs are not impleaded. Hence, I heard the learned Public Prosecutor who urged that the evidence of DW1 and DW2 is not sufficient to rebut the presumption u/s.139 of the N.I. Act.

6. 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. This deemed provision is subject to the statutory condition that 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 and non-payment of due amount after receipt of notice by the drawer of the cheque.

7. In this backdrop, I have gone through the oral evidence of PW1, who is the complainant in this case. His evidence shows that Ext.P1 was issued in discharge of a debt. When Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient. Ext.P2 is the intimation dated 21.12.2006 issued by the Bank of Baroda, Mavelikara branch. This intimation was given to PW1 on 26.12.2006 by Canara Bank, Kariyilakulangara. He made a demand of the due amount by giving a notice. Ext.P5 is the lawyer notice. Ext.P4 is the postal receipt. Ext.P5 shows that PW1 issued notice on 24.1.2007 and he received the intimation on 27.1.2007. The acknowledgment card was delivered on 30.1.2007. Ext.P7

is the reply notice. PW2 supported the evidence of PW1. He deposed that he saw the transaction and the entrustment of Ext.P1 cheque to PW1. The revision petitioner and her sister's husband Radhakrishnan was also present. Analysing the evidence of PW1 and PW2, it is clear that Ext.P1 was issued in discharge of a debt and when it was presented for encashment, it was dishonoured for the reason of funds insufficient. When the cheque is dishonoured for the reasons stated u/s.138 of the N.I. Act, a presumption u/s.139 of the N.I. Act can be drawn in favour of the holder of the cheque.

8. 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. 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 principle drawing presumptions has been explained by the Apex Court in Hiten P. Dalal v. Bratindranath Banerjee (AIR 2001 SC 3879], Beena v. Muniappan (AIR 2001 SC 2995). On a perusal of Section 139 of the N.I. Act, it is clear that a rebuttal presumption is created that the cheque was issued in discharge of a debt or liability. It is the primary responsibility of the revision petitioner to rebut that presumption. For that, she examined DW1 and DW2. DW2 is the revision petitioner herself. Exts.D1 and D2 were marked on her side. Even though oral evidence of DW1 and DW2 and Exts.D1 and D2 were considered by the trial Court, it is not sufficient to rebut the presumption. Therefore, the trial Court convicted the revision

petitioner, which was confirmed by the appellate Court. I do not find any illegality in the above finding of the trial Court. Therefore, the conviction u/s.138 of the N.I. Act is only to be confirmed.

9. Considering the nature of transaction, the sentence imposed on the revision petitioner is modified as follows:

The revision petitioner is sentenced to imprisonment till rising of the Court u/s.138 of the N.I. Act and directed to pay compensation of ₹2,50,000/- u/s.357(3) Cr.P.C., in default of payment of compensation, simple imprisonment for three months. If the compensation amount is realised, it shall be disbursed to the 1st respondent. The revision petitioner is directed to surrender in the Judicial First Class Magistrate-II, Haripad to undergo the modified sentence, within two months from the date of receipt of a

copy of this order, failing which the learned Magistrate is directed to issue non bailable warrant against her.

The Crl.R.P. is disposed of as above.

P.D. RAJAN, JUDGE.

acd

