IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

Crl.Rev.Pet.No. 2875 of 2004 (D)

AGAINST THE JUDGMENT IN CRL.APPEAL 324/2003 of ADDL. SESSIONS COURT, THRISSUR

AGAINST THE JUDGMENT IN ST 12/1999 of C.J.M. COURT, THRISSUR

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

V.L.OUSEPH, AGED 34, S/O. LONAPPAN,
VELLAMPLAVU HOUSE, RAPPAL, PUDUKKAD,
THRISSUR DIST., PROPRIETOR,
M/S. OUSEPH OIL MILLS NO.284, PARAPUKKARA, RAPPAL,
THRISSUR DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE::
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1. THE NATIONAL SMALL INDUSTRIES
CORPORATION LTD., VISITORS BUILDING, M.G.ROAD
THRISSUR, REP. BY THEIR SENIOR ASST. POWER OF
ATTORNEY HOLDER, VALSAMMA VIJAYAN, W/O.A.R.VIJAYAN
SR. ASST., NATIONAL SMALL INDUSTRIES CORPORATION LTD,
VISITORS BUILDING, M.G.ROAD, THRISSUR-4.

2. THE STATE OF KERALA,
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
AT ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 12-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

STK

P.D. RAJAN, J.

Crl.R.P.2875 of 2004

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Dated this the 12th of November, 2015

ORDER

The revision petitioner, who is the appellant in Crl. Appeal 324/03 on the file of the Ist Addl. Sessions Judge, Thrissur 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 S.T.12/99 on the file of the Chief Judicial Magistrate, Thrissur and convicted for offence punishable under Section 138 of the N.I. Act and sentenced to pay a fine of Rs.40,000/- in default, to undergo simple imprisonment for six months. Against that, he preferred the above appeal, in which, the conviction was confirmed. Being aggrieved by that, he preferred this revision petition.

2. Complainant in the trial court is the first respondent in this revision petition. The complainant's case is that, complainant supplied 4 Bolt Oil Expeller to the accused under higher purchase agreement. In

discharge of a debt of Rs.30,200/- he issued Ext.P3 cheque drawn on Catholic Syrian Bank, Irinjalakuda 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, which was returned as unclaimed. There was no repayment. In the circumstance, the above complaint was filed in the Chief Judicial Magistrate Court, Thrissur.

3. During trial, complainant examined PW1 and his documents were marked as Exts.P1 to P10. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. He examined DW1 and produced Ext.D1. 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 as per Ext.D1, he had paid a portion of the amount. Subsequently, due to the intervention of the police, a cheque was forcefully obtained by the first respondent and foisted a false case.

This legal position was not appreciated by the trial court. Hence, the illegality committed by the trial court is to be rectified by invoking revisional jurisdiction.

5. The learned Public Prosecutor strongly opposes the above argument and contended that Ext.P3 was issued in discharge of a debt and there is no illegality in the findings of the courts below. In the circumstance, notice to first respondent was dispensed with.

6. According to Section 138 of the N.I. 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 N.I. 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. The oral evidence of PW1 shows that he is the power of attorney holder of the first respondent. He is working as Deputy Manager and the first respondent is a firm working under Department of Small Scale Industries, Government of India. As per Ext.P1, he is authorised to represent the first respondent. There was transaction between the revision petitioner and first respondent and first respondent executed a higher purchase agreement for machine. When he failed to pay the monthly instalments as per agreement, he issued two cheques for Rs.5000/- on 25.02.98 for Rs.30,200/- on 25.03.98. Ext.P3 is the cheque in this case for Rs.30200/-. When it was presented for encashment, it was dishonoured for the

reason of funds insufficient. Ext.P4 is the dishonour memo. He demanded the due amount by giving a notice in writing. Ext.P5 is the returned notice. Ext.P6 is the statement of account. Ext.P7 is the delivery note. He also produced Exts.P8, P9 and P10 in the trial court. Perusing the oral evidence of PW1, it is true that, when Ext.P3 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 N.I. Act, a presumption under Section 139 of the N.I. Act can be drawn in favour of the holder of the cheque.

8. 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 N.I. 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".

In **Beena v. Muniappan (AIR 2001 SC 2995),** it is held that the presumption is rebuttable. Revision petitioner examined DW1 in support of his defence evidence. He contended that he paid substantial amount and Ext.D1 series is the documentary evidence to prove the payment. Subsequently, the first respondent obtained Ext.P3 with the help of police. First respondent filed a complaint before police and due to their coercion, he was forced to sign Ext.P3. Even though such a contention was raised by the revision petitioner, trial court discarded the above contention on the ground that, it is not believable since the first respondent is a Government firm. They have no such allegation against the revision petitioner. PW1 deposed that two cheques were issued at the time of discharge of the debt and no force was used by them for obtaining the due amount. If that be the position, the defence contention put forward by the revision petitioner is to be discarded. In the circumstance, he was convicted under Section 138 of the N.I. Act, which was upheld by the appellate court. I find no illegality in the above findings of the courts below.

However, the conviction and sentence passed by the trial court is confirmed. There is no merit in this revision petition and it is dismissed accordingly. The revision petitioner is directed to surrender in the trial court to undergo the sentence, failing which, the trial Magistrate shall issue non-bailable warrant forthwith.

Sd/-
P.D. RAJAN,
JUDGE

STK

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P.A. TO JUDGE