

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

CrI.Rev.Pet.No. 1680 of 2007 ()

AGAINST THE JUDGMENT IN CrI.A. 861/2005 of IVth ADDL. SESSIONS COURT, EKM

AGAINST THE JUDGMENT IN CC 2468/2001 of ADDL.C.J.M. COURT, ERNAKULAM

REVISION PETITIONER(S):

**P.K.PUSHPAKARAN,
SANTHA NIVAS,
THAIVELITHUNDAYIL,
SPICES STREET, KOCHI-18.**

BY ADV. SRI.T.N.HAREENDRAN

RESPONDENT(S)/ STATE:

- 1. C.A.JOHNSON , JOHNSON WELDERS,
PETTA, POONITHURA, ERNAKULAM-17.**
- 2. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

**R1 BY ADV. SRI.T.K.RADHAKRISHNAN
SMT.S.SREEDEVI**

R2 BY PUBLIC PROSECUTOR SRI. N. SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

STK

P.D. RAJAN, J.

Crl. R.P. No.1680 of 2007

Dated this the 15th day of September, 2015

ORDER

The revision petitioner is the appellant in Crl.Appeal No.861/2005 of IV Additional Sessions Judge, Ernakulam challenges the judgment of concurrent findings of conviction under Section 138 of the Negotiable Instruments Act. He was accused in C.C.2468/2001 of the Additional Chief Judicial Magistrate, Ernakulam and he was convicted under Section 138 of the Negotiable Instruments Act and sentenced to pay a fine of Rs.41,000/-, in default of payment of fine, simple imprisonment for 2 months. Against that he preferred an appeal, where the findings of the trial court 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 in the trial court was that, in discharge of a debt of Rs.40,000/-, Ext.P1 cheque was issued to the complainant.

When it was presented for encashment, it was dishonoured for the reason of funds insufficient. The complainant gave a lawyer notice. After receipt of that notice, he sent a reply and no repayment. In the circumstance, he filed the above complaint in trial court. During trial, the complainant was examined as PW1 and his documents were marked as Exts.P1 to P6. Revision petitioner did not adduce any oral evidence and marked D1 and D2 in support of his defence. The trial court convicted the accused and appellate court confirmed the findings of the trial court. Against that, he preferred this revision petition.

3. When the revision came up for hearing, the learned counsel appearing for the revision petitioner submitted that revision petitioner is no more. He submitted the death certificate, which is marked as Ext.C1. As per Ext.C1, he died on 5.9.10 at Sudheendra Medical Mission Hospital, Ernakulam. While considering the revision, the apex court in **State of Kerala V. Narayani Amma Kamala Devi (AIR 1962 SC 1530)**

held that, there is no abatement on the death of the revision petitioner.

4. The object of conferring revisional power to the High Court is to correct grave miscarriage of justice arising from erroneous or defective orders. While exercising this power, it is justified only to set right grave failure of justice and not merely to rectify every error. The fact that the lower court has taken a wrong view of law or misapprehended the evidence on record cannot be a reason to interfere unless it has resulted in grave miscarriage of justice. The revisional jurisdiction is supervisory jurisdiction to find out the illegality, irregularity in any order or sentence or proceedings of the Court below.

5. It is clear from the oral evidence of PW1 that Ext.P1 was issued in discharge of a debt. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. Ext.P2 is the dishonour memo. Ext.P3 is the paying slip. First respondent gave a lawyer notice. Ext.P4 is the copy of the lawyer notice.

Ext.P5 is the acknowledgement card. Ext.P6 is the lawyer notice. Analysing the oral evidence of Exts.P1 to P6, it is found that when Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient.

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”.

7. A perusal of Ext.P1 shows that when signature was admitted, therefore a presumption under Section 139 is possible to draw in favour of the holder cheque. The revision petitioner marked Ext.D1 and D2 to rebut the presumption. The trial court was of the view that it is not sufficient to rebut the presumption under Section 139 of the Negotiable Instruments Act and trial court convicted

the accused and sentenced the revision petitioner to pay fine of Rs.41000/-, in default of payment of fine, to undergo simple imprisonment for two months, which was confirmed in the appeal. I find no illegality in the conviction passed by the courts below. Therefore, I modify the sentence as follows;

The revision petitioner is sentenced to pay a compensation of Rs.40,000/- under Section 357(3) Cr.P.C. Since the revision petitioner is no more and legal heirs are not impleaded in the matter, it is not possible impose the default clause and with the above modification, I dispose this revision petition.

STK

//TRUE COPY//

P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE