

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

Crl.Rev.Pet.No. 2924 of 2004 (A)

**AGAINST THE JUDGMENT IN CRA 666/2001 of II ADDL. SESSIONS COURT,
KOZHIKODE**

AGAINST THE JUDGMENT IN CC 545/2000 of J.M.F.C.-I, THAMARASSERY

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**M.MUJEEBRAHMAN,
S/O. ABOOBACKERKUTTY, PALLIPURATH,
RAROTH AMSOM,
KEDAVOOR DESOM.**

BY ADV. SRI.SUNNY MATHEW

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE:

- 1. N.K.IBRAHIM S/O. ASSANKUTTY,
NELLIKUNNUMMAL VEEDU, VAVADU AMSOM,
KALARANTHIRI DESOM.**
- 2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.**

R2 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09-
10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.2924 of 2004

Dated this the 9th of October, 2015

ORDER

The revision petitioner, who is the appellant in Criminal Appeal 666/2001 on the file of the Sessions Judge, Kozhikode challenges the concurrent findings of the conviction under Section 138 of the Negotiable Instruments Act. He was accused in C.C. 545/2000 on the file of Judicial First Class Magistrate-1, Thamarassery for offence punishable under Section 138 of the Negotiable Instruments Act, he was convicted and sentenced to imprisonment for 3 months and to pay a fine of Rs.5000/-, in default of payment of fine, simple imprisonment for one month.

2. The complainant's case in the trial court is that on 20.02.2000, the accused borrowed a sum of Rs.75000/- from him and in discharge of that debt he issued Ext.P3 cheque. When Ext.P3 was presented for encashment through South Malabar Gramin Bank, Manipuram branch, it was dishonoured for the reason of funds insufficient.

The complainant demanded the money by giving a notice in writing. There was no repayment. In the circumstance, a complaint was filed in the trial court.

3. During trial, the complainant was examined as PW1 and his documents were marked as Exts.P1 to P8. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. He examined DW1 and marked Ext.D1. The trial court convicted him. Against that he preferred an appeal which was dismissed by the appellate court. Being aggrieved by that, he preferred this revision petition.

4. The learned counsel appearing for the revision petitioner contended that the sentence imposed by the trial court is too harsh and modify the sentence. The Public prosecutor has no objection. During pendency of this appeal it is reported that, the first respondent died, the legal heirs were not impleaded.

5. The specific case of PW1 in the trial court was that, Ext.P3 cheque was issued in discharge of a debt and when it was presented for encashment, it was

dishonoured for the reason of funds insufficient. Ext.P4 and Ext.P5 are the dishonour memos. He sent a lawyer notice to the accused demanding the cheque amount. Ext.P7 is the lawyer notice and Ext.P8 is the copy of Ext.P7 notice. Ext.P6 is the registration slip. Ext.P2 is the extract of the ledger and Ext.P1 is the specimen signature slip. Revision petitioner admitted his signature in Ext.P1. When cheque is dishonoured for the reason under Section 138 of the Negotiable Instruments Act, it is presumed that a presumption under Section 139 of the Negotiable Instrument Act can 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”.

A three Judge bench of the Apex Court in **Rangappa V. Sri Mohan (2010(11) SCC 441)** held as follows:-

“The presumption mandated by Section 139 includes a presumption and there exists a legally enforceable debt or liability. This is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the respondent complainant”.

Therefore, in the present case since the cheque as well as the signature has been accepted by the accused, the presumption under Section 139 would operate. When signature is admitted, it is the responsibility of the revision petitioner to rebut the presumption. He examined DW1 and marked Exts.D1 in support of his defence, that document was not sufficient to rebut the presumption. It is the primary responsibility of the revision petitioner to rebut the presumption under Section 139 of N.I. Act. When there is no evidence to rebut the

presumption under Section 139 of the Negotiable Instrument Act, the burden is upon the revision petitioner. The trial court convicted the accused and appellate court confirmed the findings of the trial court and dismissed the appeal. I find no illegality in the conviction of the courts below.

7. The learned Magistrate convicted the revision petitioner and sentenced to imprisonment for 3 months and pay a fine of Rs.5000/-, in default to undergo simple imprisonment for one month under Section 138 of the Negotiable Instruments Act. Considering the nature of offence and character of the offender, the sentence imposed by the trial court is to be modified. In the circumstance, the conviction under Section 138 of the Negotiable Instruments Act is confirmed and he is sentenced as follows;

The revision petitioner is sentenced to imprisonment till rising of court under Section 138 of the N. I. Act and to pay a compensation of Rs.75,000/- under Section 357(3) Cr.P.C. If the compensation amount is realized which shall

be disbursed to the legal heirs of the first respondent, in default of payment of compensation, simple imprisonment for 3 months. The revision petitioner is directed to surrender in the trial court to undergo the modified sentence and this revision petition is disposed as above.

STK

//TRUE COPY//

P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE