

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

Cr1.Rev.Pet.No. 3054 of 2004 ()

AGAINST THE JUDGMENT IN Cr1. APPEAL 13/2001 of ADDL.SESIONS COURT,
PATHANAMTHITTA DATED 28-07-2004

AGAINST THE JUDGMENT IN CC NO. 61/1999 of CHIEF JUDICIAL
MAGISTRATE, PATHANAMTHITTA DATED 09-01-2001

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

K.F.MATHEW, KAVALAYIL HOUSE,
MUTTUMON, KUMBANAD.

BY ADV. SRI.PHILIP M.VARGHESE

RESPONDENT(S)/COMPLAINANT AND STATE::

1. NIRMALAKUMARI N.,
MALETHU HOUSE,
MASAHCHERYMEL, CHENGANNOOR.

2. THE STATE OF KERALA, REP. 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 07-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.3054 of 2004

Dated this the 7th day of September, 2015

ORDER

The revision petitioner, who is the accused in Crl.Appeal No.13/2001 of Additional Sessions Judge, Pathanamthitta, challenges the judgment of conviction u/s.138 of the Negotiable Instruments Act (hereinafter referred to as N.I. Act). He was the accused in C.C. No.61/1999 of Chief Judicial Magistrate, Pathanamthitta and sentenced to simple imprisonment for a period of three months u/s.138 of the N.I.Act and to pay compensation of ₹18,000/- u/s.357(3) Cr.P.C. The appellate Court confirmed the finding and dismissed the appeal. Being aggrieved by that, the accused preferred this revision petition.

2. The facts necessary for the indictment were that in discharge of a debt of ₹18,000/- the revision petitioner issued Ext.P1 cheque dated 22.3.1998 to the 1st respondent. When it was presented for encashment, dishonoured for the reason of funds insufficient. The 2nd respondent demanded the amount by giving a notice in writing. Even after notice, there was no repayment from the side of the revision petitioner. In the circumstances, the above complaint was filed in the trial Court.

3. To prove the allegation, the complainant was examined as PW1 and her documents were marked as Exts.P1 to P7. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. He did not adduce any defence evidence. The trial Court convicted the accused. Hence, he filed the

above appeal, which was dismissed.

4. After filing this revision petition, this Court directed the revision petitioner to give notice to the 1st respondent. The 2nd respondent was represented through the Public Prosecutor. Even after specific direction, no steps were taken by the revision petitioner. In the circumstances, this case was posted today for disposal.

5. Today, the learned counsel appearing for the revision petitioner submitted that the sentence imposed by the trial Court is excessive. Hence, the illegality committed by the trial Court may be corrected by invoking revisional jurisdiction.

6. The revisional jurisdiction of the High Court are entirely discretionary and it can be used for the purpose of satisfying the correctness, legality or propriety of the

finding and sentence or order of the courts below. A close scrutiny of Section 138 of the N.I. Act shows that 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. PW1, who is the complainant in this case, deposed that Ext.P1 cheque was presented for encashment, it was dishonoured for the reason of funds insufficient. Ext.P2 is the dishonour memo. Ext.P3 is the copy of the lawyer notice. Ext.P4 is the postal receipt. Ext.P5 is the letter received from postal Superintendent. Ext.P6 is the true copy of ledger folio. Ext.P7 is the copy of the cheque returned register. Exts.P2 and P6 show that when Ext.P1 was presented for encashment, it was

dishonoured for the reason of funds insufficient.

According to Section 138 of the N.I. Act, when cheque is dishonoured for the reason of funds insufficient, a presumption u/s.139 of the N.I. Act will 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 presumption 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) and

Narayana Menon v. State of Kerala [2006 (3) KLT 404 (SC)].

Therefore, accepting the law settled by the Apex Court, the initial burden is upon the revision petitioner to rebut that presumption.

9. In this case, the signature in Ext.P1 was admitted by the revision petitioner. PW1 stated that Ext.P1 was issued in discharge of a debt. In the absence of any rebuttal evidence, the Courts below drawn a presumption u/s.139 of the N.I. Act and opined that the cheque was issued in discharge of a debt or liability. I do not find any illegality in the above finding. Therefore, I confirm the finding of the courts below. But, the trial Court sentenced the revision petitioner to simple imprisonment for three months u/s.138 of the N.I. Act and ordered to pay compensation of ₹18,000/-, which needs

interference. In the result, I modify the sentence as follows:

11. The revision petitioner is sentenced to imprisonment till rising of the Court and to pay compensation of ₹18,000/-, in default of payment of compensation, simple imprisonment for two months. The revision petitioner is directed to surrender in the Chief Judicial Magistrate, Pathanamthitta within 30 days from today for receiving sentence, failing which, Chief Judicial Magistrate, Pathanamthitta shall issue Non-bailable Warrant against the revision petitioner.

This revision petition is partly allowed.

P.D. RAJAN, JUDGE.

acd

