

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

Crl.Rev.Pet.No. 2220 of 2005 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 182/2001 of ADDL. SESSIONS
COURT- II, MAVELIKKARA DATED 02-03-2005
AGAINST THE JUDGMENT IN CC 116/2000 of JUDICIAL FIRST CLASS (MUNSIFF)
MAGISTRATE-II, HARIPAD DATED 17-05-2001

REVISION PETITIONER(S)/ACCUSED/APPELLANT:

ANIRUDHAN,
S/O.KRISHNA PANICKER, KRISHNEN THOPPIL, KATTIL MARKET P.O.
THAMALLACKAL SOUTH MURI, KUMARAPURAM VILLAGE.

BY ADVS.SRI.G.RAJEEVKUMAR
SRI.B.RENJITHKUMAR

RESPONDENT(S)/COMPLAINANT/RESPONDENTS & STATE:

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1. MANMADHAN,
AGED 45 YEARS, MUKESH BHAVAN, THAMALLACKAL THEKKU
THAMALLACKAL P.O., HARIPPAD.
 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI. N. SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 29-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl. R.P.No.2220 of 2005

Dated this the 29th day of September, 2015

ORDER

The revision petitioner, who was the appellant in Crl.Appeal No.182/2001 of Additional Sessions Judge-II, Mavelikara, challenges the concurrent finding of conviction u/s.138 of the Negotiable Instruments Act (hereinafter referred to as the N.I. Act). He was the accused in C.C.No.116/2000 of Judicial First Class Magistrate-II, Haripad and convicted and sentenced to simple imprisonment for three months and to pay fine of ₹5,000/-, in default of payment of fine, simple imprisonment for one month. Against that, he preferred the above appeal, in which the conviction was confirmed. Being aggrieved by that, he preferred this

revision petition.

2. The complainant's case in the trial Court was that the accused borrowed a sum of ₹2,50,000/- and in discharge of that debt, he issued Ext.P1 cheque. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. Thereafter, the complainant demanded the amount by giving a notice in writing to the revision petitioner. Even after receipt of notice, there was no repayment by the revision petitioner. In the circumstances, he filed the complaint in the trial Court. During trial, PW1 and PW2 were examined and Exts.P1 to P9 were marked as documentary evidence. 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, after analysing the evidence, convicted the revision petitioner.

3. The learned counsel for the revision petitioner admitted that there is no rebuttal evidence in this case. Moreover, the sentence imposed by the trial Court is too harsh and to be modified. The learned Public Prosecutor has no objection in modifying the above sentence.

4. According to PW1, the revision petitioner borrowed a sum of ₹2,50,000- and in discharge of that debt, he issued Ext.P1 cheque. When Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient. Ext.P2 is the dishonour memo. Ext.P3 is the intimation memo. The complainant demanded the money by issuing a lawyer notice. Ext.P4 is the copy of the lawyer notice. Ext.P5 is the postal receipt. Ext.P6 is the acknowledgment card. PW2, the Bank Manager deposed that when Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient. Ext.P7 is

the copy of extract of statement. Ext.P8 is the copy of cheque return register. Ext.P9 is the copy of specimen signature. Analysing the evidence in Exts.P1 to P9, the trial Court was of the view that the cheque was dishonoured for the reason stated u/s.138 of the N.I. Act.

5. When cheque is dishonoured for the reason 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. Section 139 of the N.I. Act 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 revision petitioner admitted his signature, which is correlating the specimen signature mentioned in Ext.P9. No rebuttal evidence is available with regard to that aspect. In the circumstances, the trial Court and the appellate

Curt were of the view that Ext.P1 cheque was issued in discharge of a debt, which was dishonoured for the reason of funds insufficient. It is the primary responsibility of the revision petitioner to rebut the evidence, but no such evidence is available in this case. The principle drawing presumption has been explained by the Apex Court in Beena v. Muniappan (AIR 2001 SC 2995). Therefore, the conviction passed by the trial Court is only to be confirmed.

6. The quantity of punishment must be depend up on the facts and circumstances of each case and the conduct of the accused and victim. The sentence, therefore, should be appropriate neither too harsh nor too lenient. In he peculiar circumstances of the case, the revision petitioner is sentenced as follows:

- a) He is sentenced to imprisonment till rising of the

Court u/s.138 of the N.I. Act and 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.

b) If the compensation amount is realised, it shall be disbursed to the 1st respondent.

c) The revision petitioner is directed to surrender in the Judicial First Class (Munsiff) Magistrate-II, Haripad forthwith to undergo the modified sentence.

d) If he fails to do so, the learned Magistrate shall issue non-bailable warrant against the revision petitioner.

Crl.R.P. is disposed of accordingly.

P.D. RAJAN, JUDGE.

acd

