IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 3152 of 2004 (D)

AGAINST THE JUDGMENT IN CC 209/1999 of JUDICIAL MAGISTRATE OF FIRST CLASS-V,KOZHIKODE DATED 23-07-2001

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

V.VENUGOPAL, S/O.VELU,
"THRIKKAR", ADDIKKADAN KUZHI P.O., FEROKE COLLEGE
KOZHIKODE.

<u>* ADDL.REVISION PETITIONERS</u>

2: VELU, S/O. LATE CHATHU,
AGED 65 YEARS,
'VALIYATTIL' THRIKKAR,
ADDIKKADAN KUZHI P.O,
FEROKE COLLEGE, KOZHIKODE.

3: MALUKUTTY, W/O. VELU,
AGED 63 YEARS, 'VALIYATTIL'
THRIKKAR, ADDIKKADAN KUZHI P.O.,
FEROKE COLLEGE, KOZHIKODE.

4: VINISHA, W/O. VENUGOPAL,
AGED 34 YEARS,
'VALIYATTIL', THRIKKAR,
ADDIKKADAN KUZHI P.O.,
FEROKE COLLEGE, KOZHIKODE.

*(ADDL.REVISION PETITONERS 2 TO 4 ARE IMPLEADED AS PER ORDER DATED 21.12.15 IN CRL.M.A.12856/07 IN CRL.R.P. 3152/04)

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE:

1. P.SURENDRAN, S/O.KELU,
PANDIKASALA MEETHAL HOUSE, FEROKE COLLEGE, KOZHIKODE.

2. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.SUNNY MATHEW
R2 BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.3152 of 2004

Dated this the 21st day of December, 2015

ORDER

Revision petitioner is the accused in C.C.No.209/1999 of Judicial Magistrate of the First Class-V, Kozhikode for having committed an offence u/s.138 of the Negotiable Instruments Act (hereinafter referred to as the N.I. Act). The complainant's case is that the accused borrowed a sum of ₹1 lakh from the complainant and in discharge of that debt, he issued Ext.P1 cheque for that amount. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. He demanded the amount by giving a notice in writing. Even after notice, there was no repayment. In the circumstances, the above complaint was filed in the trial Court.

2. To prove the offence, the complainant was examined as PW1 and his documents were marked as Exts.P1 to P7. The accused did not adduce any defence evidence. The trial Court convicted him and sentenced to simple imprisonment for six months. Against that, he preferred Crl.Appeal No.403/2001 before Additional Sessions Court, Kozhikode, in which the sentence was modified to imprisonment for one month and compensation of ₹1 lakh u/s.357(3) Cr.P.C. with default sentence of simple imprisonment for one month. Being aggrieved by that, he preferred this revision petition.

3. Heard both sides. The learned counsel for the revision petitioner submitted that the revision petitioner died in the year 2007. Hence, additional revision petitioners were impleaded.

4. I heard the learned counsel appearing for the 2nd

respondent also.

5. 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 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.

6. PW1 is the complainant, who deposed that Ext.P1 cheque was issued in discharge of a debt. When it was presented for encashment, it was dishonoued for the reason of funds insufficient. Exts.P2 and P3 are the dishonour memos issued from the bank. Ext.P4 is the copy of the lawyer notice. Ext.P5 is the postal receipt. Ext.P6 is the returned lawyer notice. Ext.P7 is the extract of the account. On a perusal of Exts.P1 to P3, it is clear that when Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient. When the 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.

7. 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 presumptions has been explained by the Apex Court in **Beena** v. **Muniappan** (AIR 2001 SC 2995) and in **Rangappa** v. **SriMohan** [(2010) 11 SCC 441] . No evidence has been adduced by the accused to rebut the presumption u/s.139 of the N.I. Act. In the circumstances, the trial Court convicted the revision petitioner and sentenced him, which was modified by the appellate Court. I do not find any illegality in the above finding. Therefore, there is no merit in this revision petition and it is dismissed accordingly.

Sd/-
P.D. RAJAN, JUDGE.

acd

True copy

PA to judge.