

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

Cr1.Rev.Pet.No. 3187 of 2004 ()

AGAINST THE JUDGMENT IN CRL.APPEAL 98/2001 of I ADDL.SESIONS COURT,
TRIVANDRUM DATED 20-08-2004

AGAINST THE JUDGMENT IN CC 581/1999 of J.M.F.C.-II,ATTINGAL
DATED 08-02-2001

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

MANAS T., RETIRED L.M.U.P.S.HEAD MASTER
CHARUVILA PUTHEN VEEDU, SASTHAMPOIKA
THATTATHUMALA P.O.

BY ADV. SRI.S.RAJASEKHARAN NAIR

RESPONDENT(S)/RESPONDENT/COMPLAINANT AND STATE:

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1. S.NIZAMUDEEN, S/O. SAINULABDEEN,
NIZAM MANZIL, AYIRUKUZHI P.O., CHITHRA.
 2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, THIRUVANANTHAPURAM.

R2- BY PUBIC PROSECUTOR SRI. N. SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 25-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl. R.P.No.3187 of 2004

Dated this the 25th day of September, 2015

ORDER

The revision petitioner, who is the appellant in Crl.Appeal No.98/2001 on the file of I Additional Sessions Judge, Thiruvananthapuram, challenges the concurrent finding of conviction u/s.138 of the Negotiable Instruments Act (hereinafter referred to as the N.I. Act). He was convicted in C.C.No.581/1999 of Judicial First Class Magistrate-II, Attingal and sentenced to rigorous imprisonment for one year and to pay a fine of ₹5,000/-, in default, simple imprisonment for three months u/s.138 of the N.I. Act, which was modified in appeal. The first respondent is the complainant in the trial Court.

2. The complainant's case in the trial Court was that on 2.1.1999, the accused borrowed a sum of ₹60,000/- and in discharge of that debt, he issued Ext.P1 cheque drawn on S.B.I. Thattathumala branch. When it was presented for encashment through Nilamel Service Co-operative Bank, it was dishonoured for the reason of funds insufficient. The complainant issued a lawyer notice to the accused and demanded the due amount, even after receipt of the notice, there was no repayment by the accused. In the circumstances, the complaint was filed in the trial Court.

3. During trial, the complainant was examined as PW1. His documents were marked as Exts.P1 to P6. The incriminating circumstances brought out in evidence were denied by the accused, while questioning him. He did not adduce any defence evidence. After analysing the

evidence on record, the trial Court convicted him.

4. The revision petitioner in his petition contended that there was no legally enforceable debt between the revision petitioner and the 1st respondent. Ext.P1 was signed blank cheque, which was issued as a security, when he was appointed as a teacher. Therefore, no legally enforceable debt towards the 1st respondent. In the light of the above contention in the revision petition, I heard the learned Public Prosecutor and notice to the 1st respondent has been dispensed with.

5. The revisional jurisdiction of the High Court is discretionary and there is no vested right of revision. High Court while invoking such jurisdiction can exercise such power to decide all questions as to the correctness, legality or propriety of any order or findings of any inferior courts. For ascertaining the validity of revision, I

have examined the oral and documentary evidence. It is clear from the 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 handling charge receipt. Ext.P4 is the Advocate notice. Ext.P5 is the postal receipt and Ext.P6 is the acknowledgment card. A perusal of Ext.P1 to P6 shows that the cheque was dishonoured for the reason of funds insufficient. No defence evidence has been adduced by the revision petitioner to rebut the presumption u/s.139 of the N.I. Act.

6. 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.

7. 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 principle drawing presumptions has been explained by the Apex Court in Beena v. Muniappan (AIR 2001 SC 2995).

The finding of the trial Court was upheld by the appellate Court also. I do not find any illegality in the above judgment. In the circumstances, the conviction u/s.138 of the N.I. Act is only to be confirmed.

8. The appellate Court modified the sentence of the revision petitioner and thus, he was sentenced to undergo simple imprisonment for three months and to pay compensation of ₹40,000/- u/s.357(3) Cr.P.C., in default simple imprisonment for three months, which needs interference. In the circumstances, the revision petitioner

is sentenced to imprisonment till rising of the Court u./s.138 of the N.I. Act and to pay compensation of ₹60,000/- u/s.357(3) Cr.P.C., in default of payment of compensation, simple imprisonment for three months. The revision petitioner is directed to surrender in the Judicial First Class Magistrate Court-II, Attingal within thirty days from today, for receiving the modified sentence, failing which the Judicial First Class Magistrate shall issue non bailable warrant against the revision petitioner.

The Crl. R.P. is disposed of as above.

P.D. RAJAN, JUDGE.

acd

