

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

Crl.Rev.Pet.No. 2284 of 2005 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 435/2003 of SESSIONS
COURT, PATHANAMTHITTA DATED 09-08-2005

AGAINST THE JUDGMENT IN CC 640/2000 of J.M.F.C., ADOOR
DATED 31-10-2003

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

A.K. KRISHNAN, AGED 63 YEARS,
S/O. KUNJUPILLAI, ANIL SADANAM, THUVAYOOR
VADAKKUM MURI, ERATHU VILLAGE.

BY ADV. SRI.BIJI MATHEW

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE::

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1. GOPINATHAN, S/O. KUNJUPILLAI,
VALSALA BHAVAN, ANGADICKAL, VADASSERIKKARA
MURI, ANGADICKAL VILLAGE.
 2. THE STATE OF KERALA, REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF, KERALA
ERNAKULAM.

R1 BY ADV. SRI.NOBEL RAJU

R2 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 12-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.2284 of 2005

Dated this the 12th day of November, 2015

ORDER

Revision petitioner, who is the appellant in Crl.Appeal No.435/2003 of Sessions Judge, Pathanamthitta, challenges the concurrent 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.640/2000 on the file of Judicial First Class Magistrate, Adoor for offence u/s.138 of the N.I. Act, he was convicted and sentenced to simple imprisonment for three months and to pay ₹80,000/- as compensation u/s.357(3) Cr.P.C., in default of payment of compensation, simple imprisonment for two months. Against that, he preferred the above appeal, which was dismissed by

the appellate Court. Being aggrieved by that, he preferred this revision petition.

2. The complainant is the 1st respondent in this revision petition. The complainant's case is that on 1.6.1999, the revision petitioner borrowed a sum of ₹80,000/- and in discharge of that debt, he issued Ext.P1 cheque. When the cheque was presented for encashment, it was dishonoured for the reason of funds insufficient. The 1st respondent demanded the amount by giving a notice in writing. Even after receipt of notice, there was no payment. In the circumstances, the above 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.

4. When the revision petition came up for hearing, the learned counsel for the revision petitioner submitted that the revision petitioner died in 2013. The learned counsel for the 1st respondent submitted that the entire amount has been paid by the revision petitioner and no dispute survives. Since there is no abatement in revision, I have gone through the lower Court judgment.

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. To prove the allegation, the defacto complainant was examined as PW1. His evidence shows that Ext.P1 was issued in discharge of a debt and 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 intimation. Ext.P4 is notice. Ext.P5 is the acknowledgment card. Ext.P6 is the reply notice. Ext.P7 is the certified ledger. Ext.P8 is the lawyer notice. Analysing the oral evidence of PW1, it is clear that cheque was dishonoured for the reason of funds insufficient. 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.

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

Apex Court in three-Judge Bench judgment in Rangappa v.

SriMohan [(2010) 11 SCC 441] held as follows:

"The presumption mandated by Section 139 includes a presumption that 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 favour the respondent complainant".

To rebut the presumption u/s.139 of the N.I. Act, the revision petitioner examined DW1 and marked Ext.D1. The signature in Ext.P1 was accepted by the revision petitioner.

Presumption u/s.139 of the N.I. Act is rebuttable presumption. Even though DW1 was examined, the trial Court was of the view that, that evidence itself is not

sufficient to rebut the presumption and accordingly, convicted the revision petitioner, which was confirmed by the appellate Court. I do not find any illegality in the above judgment. Since the revision petitioner is no more, further direction in the above matter is not necessary. There is no merit in this revision petition and it is dismissed accordingly.

P.D. RAJAN, JUDGE.

acd

