IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

Crl.Rev.Pet.No. 2436 of 2005 ( )

AGAINST THE ORDER IN Crl.Appeal 327/2001 of ADDL. SESSIONS JUDGE (ADHOC) KOTTAYAM DATED 23-06-2005

AGAINST THE JUDGMENT IN CC 316/1998 of JUDICIAL MAGISTRATE OF FIRST CLASS,VAIKOM DATED 23-06-2001

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

MR.THOMAS KURIAN
VELAMATTATHIL VEEDU, KUNNAPPALLY, PERUVA P.O.
KOTTAYAM DISTRICT.

BY ADV. SRI.ALIAS M.CHERIAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

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1. MR.SANDEEP
   S/O.KRISHNA PILLAI,
   SIVAS READY MADES, PADINJARENADA, VAIKOM.

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

R1 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 01-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

acd

P.D. RAJAN, J.

Crl. R.P.No.2436 of 2005

Dated this the 1st day of October, 2015

ORDER

Revision petitioner is the appellant in Crl. Appeal No.327/2001 on the file of Additional Sessions Judge (Adhoc)-1, Kottayam. He was the accused in C.C.No.315/1998 on the file of Judicial First Class Magistrate Court, Vaikom for offence punishable u/s.138 of the Negotiable Instruments Act (hereinafter referred to as the N.I. Act) and convicted to simple imprisonment for three months and to pay compensation of ₹65,000/- to the complainant u/s.357 (3) Cr.P.C. The complainant is the 1st respondent in this revision petition.

2. The complainant's case is that the accused

borrowed a sum of ₹65,000 from the complainant 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 issuing a lawyer notice. Even after that notice, there was no repayment from the side of the accused. Hence the above complaint.

3. To prove the offence, the complainant was examined as PW1 and the senior manager of the Kottayam District Co-operative Bank was examined as PW2 and marked Exts.P1 to P6. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. The trial Court convicted him.

4. 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.

5. The evidence of PW1 shows that the accused/revision petitioner issued Ext.P1 cheque on 30.12.1997. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. Exts.P2 and P3 are the dishonour memos. Ext.P4 is the copy of lawyer notice. Ext.P5 is the postal acknowledgment card. Ext.P6 is the extract of Savings Account ledger. Analysing the evidence Exts.P1 to P6, it is clear that the cheque was dishonoured for the reason of funds insufficient. When cheque is dishonoured for the reasons 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.

6. 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 **<u>Beena</u>** v. **<u>Muniappan</u>** (AIR 2001 SC 2995).

7. The Appellate Court while confirming the conviction u/s.138 of the N.I. Act, sentenced the revision petitioner to undergo simple imprisonment for one month and directed to pay compensation of ₹65,000/- u/s.357(3) Cr.P.C., which needs modification. Considering the nature of offence and the circumstances under which it was committed, I modify the sentence as follows:

8. 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 ₹65,000/- u/s.357 (3) Cr.P.C. , in default of payment of compensation, simple imprisonment for three months. The learned counsel for the revision petitioner submitted that the revision petitioner has already deposited ₹65,000/- as directed by

this Court in the Judicial Magistrate of the First Class, Vaikom. In the circumstances, the learned Magistrate is directed to disburse that amount to the 1st respondent/complainant. The revision petitioner is directed to surrender in the Judicial Magistrate of the First Class, Vaikom to undergo the modified sentence failing which, the learned Magistrate shall issue non bailable warrant against the revision petitioner.

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

P.D. RAJAN, JUDGE.

acd