

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

Crl.Rev.Pet.No. 2973 of 2006 ()

**AGAINST THE JUDGMENT IN CRL. APPEAL 24/2005 of ADDL. SESSIONS COURT,
PATHANAMTHITTA**

AGAINST THE JUDGMENT IN ST 485/2003 of C.J.M. PATHANAMTHITTA

REVISION PETITIONER(S)/APPELLANT/2ND ACCUSED:

**VENUGOPAL, VENU SADANAM,
VEATTIPPURAM P.O., PATHANAMTHITTA.**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED
BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. RAJU.V.T., VAZHAVILA PURAYIDATHIL,
MEKOZHOO P.O., MYLAPRA.**
- 3. M/S.VENU JEWELLERY,
KUMBAZHA ROAD, PATHANAMTHITTA,
REPRESENTED BY ITS MANAGING PARTNER.**

R1 BY PUBLIC PROSECUTOR SRI. N. SURESH

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 02-
11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.2973 of 2006

Dated this the 2nd of November, 2015

ORDER

The revision petitioner, who is the appellant in Crl. Appeal 24/2005 on the file of the Addl. Sessions Judge, Pathanamthitta challenges the concurrent findings of conviction under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the 'N.I. Act'). He was accused in C.C.485/03 on the file of the Chief Judicial Magistrate, Pathanamthitta and convicted for offence punishable under Section 138 of the N.I. Act and first accused was sentenced to pay fine of Rs.3,75,000/- and second accused was sentenced to imprisonment till rising of court and pay fine of Rs.5000/-, in default, to undergo simple imprisonment for one month. Against that, he preferred the above appeal, in which the conviction is confirmed and sentence was modified. Being aggrieved by that, he preferred this revision petition.

2. The second respondent in this revision petition is

the complainant in the trial court. His case in the trial court is that, in discharge of a debt, he issued a cheque for Rupees Three lakhs drawn on Federal Bank, Pathanamthitta in favour of the complainant. When the cheque was presented for encashment, it was dishonoured for the reason of funds insufficient. The complainant demanded the due amount by giving a notice in writing to the accused, which was received by the accused and no repayment thereafter. In the circumstance, a complaint was filed in the trial court.

3. During trial, 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 did not adduce any defence evidence. The trial court after sifting and weighing the evidence on record convicted the accused.

4. The learned counsel appearing for the revision petitioner contended that he had already undergone the sentence imposed by the trial court. A fine was imposed

against the first accused in the above case, which is the firm. The fine amount can be realized as per law. He had already surrendered before the trial court and remitted Rs.5000/-.

5. I heard the Public Prosecutor. Today, the revision petitioner has appeared as per the direction issued through DYSP, Pathanamthitta.

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 N.I. 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. PW1 deposed that when Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient. Ext.P2 is the dishonour memo and Ext.P3 is the intimation. Ext.P4 and P5 are the postal receipts. Ext.P6 and P7 are the acknowledgment cards. PW1 gave a lawyer notice. Ext.P8 is the copy of the lawyer notice. A perusal of oral evidence of PW1 and Exts.P1 and P2, it is clear that, the cheque was dishonoured for the reason of funds insufficient. When cheque is dishonoured for the reason stated under Section 138 of the N.I. Act, a presumption under Section 139 of the N.I. Act can be drawn in favour of the holder of the cheque.

8. When complainant proves that the cheque was received for the reasons stated under Section 138 of the

N.I. Act, the presumption under Section 139 of the N.I. 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 courts below considered the decisions of Apex court reported in **Hiten P. Dalal v. Bratindranath Banerjee (AIR 2001 SC 3879, Beena v. Muniappan (AIR 2001 SC 2995) and Narayana Menon v. State of Kerala 2006 (3) KLT 404 (SC)**. To rebut the presumption, revision petitioner did not adduce any defence evidence and trial court convicted the revision petitioner, and appellate court confirmed the conviction and modified the sentence. I find no illegality in the above judgment. The revision petitioner is directed to surrender in the Chief Judicial Magistrate Court, Pathanamthitta to undergo the modified sentence of the appellate court, failing which, the Chief Judicial

Magistrate, Pathanamthitta shall issue non-bailable warrant forthwith.

STK

Sd/-
P.D. RAJAN,
JUDGE

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P.A. TO JUDGE