IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

Crl.Rev.Pet.No. 2601 of 2005 ( )

AGAINST THE ORDER/JUDGMENT IN CRA 509/2003 of ADDL. SESSIONS COURT, KOZHIKODE

AGAINST THE ORDER/JUDGMENT IN CC 994/2001 of J.M.F.C.,VADAKARA

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

C.K. RAJAN, S/O.CHATHU,
PILAVULLAPARAMBATHU HOUSE,
KALLACHAI P.O., VADAKARA,
KOZHIKODE.

BY ADV. SRI.VINOD RAVINDRANATH

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE:
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1. A. SUNIL, S/O.DAMU,
AZHIKKAKATHU HOUSE, MADAPPALLY COLLEGE P.O.,
OORALUNGAL, VADAKARA, KOZHIKODE DISTRICT.

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

R2 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

STK

P.D. RAJAN, J.

Crl. R. P. No.2601 of 2005

Dated this the 21st day of August, 2015

ORDER

The revision petitioner is the appellant in Crl. Appeal 509/03 on the file of the Ist Additional Sessions Judge, Kozhikode, challenges the judgment confirming the conviction for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'Act') by which he was sentenced to imprisonment till the rising of court and to pay compensation of Rs.20,000/- under Section 357(3) Cr.P.C., in default of payment of compensation, simple imprisonment for one month. Against that, he preferred this revision petition.

2. The facts given rise to the complaint in the trial court was that, accused issued Ext.P1 cheque in discharge of a debt of Rs.20,000/- drawn on South Malabar Gramin Bank, Kallachi branch. When it was presented for encashment, it was dishonoured for the reason, 'funds insufficient'. The complainant demanded the amount by giving a lawyer notice. Even after receipt of the above

notice, there was no payment. But he sent a reply notice. In the circumstance, the complaint was filed in the Judicial First Class Magistrate Court, Vadakara.

3. To prove the offence, first respondent/complainant examined as PW1 and his documents were examined 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 after analyzing the evidence convicted the accused.

4. After filing this revision petition this court directed the revision petitioner to take steps against the first respondent who is the de-facto complainant in the trial court. No steps were taken even after specific directions. On 18.08.15, revision petitioner was absent. Counsel was absent. The petitioner was directed to take steps within two days, if no steps are taken within that period, it was directed to include the case in the disposal list. Today, when the case was called, there was no representation.

5. The object of conferring revisional power is to clothe the High Court with a jurisdiction of the general supervision in order to correct grave miscarriage or failure of justice arising from erroneous or defective orders. While exercising this power, it is justified only to set right grave failure of justice and not merely to rectify every error. The fact that the lower court has taken a wrong view of law or misapprehended the evidence on record cannot be a reason to interfere unless it has resulted in grave justice. The revisional jurisdiction is supervisory jurisdiction to find out the illegality, irregularity in the order or sentence or proceedings of the Court below.

6. According to Section 138 of the Negotiable Instruments 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. PW1 disposed that when Ext.P.1 cheque 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 the Lawyer notice. Ext.P5 is the postal receipt. Ext.P6 is the postal acknowledgment card. Ext.P7 is the reply notice. Ext.P8 is the extract of the ledger. Ext.P8 shows that when Ext.P.1 was presented for encashment, there was insufficient

fund in the account of the revision pettioner. Analyzing the oral evidence of PW1 and Exts.P1 to P8 it is found that Ext.P1 was dishonoured for the reason ‘funds insufficient’.

8. Section 139 of the Negotiable Instruments 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”.

A three Judge bench of the Apex Court in **Rangappa V. Sri Mohan (2010(11) SCC 441**) held as follows:-

> “The presumption mandated by Section 139 includes a presumption and 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 lliability can be contested. However, there can be no doubt that there is an initial presumption which favours the respondent complainant”.

Therefore, in the present case since the cheque as well as the signature has been accepted by the accused, the presumption under Section 139 would operate. Thus, the burden was on the accused to rebut the presumption of the existence of any legally recoverable debt or liability.

9. To rebut the presumption, DW1 was examined in the trial court and Ext.D1 was also marked. The trial court was of the view that the evidence of DW1 and Ext.D1 are not sufficient to rebut the presumption. In the circumstance, after analyzing the evidence, trial court observed that revision petitioner failed to rebut the presumption under Section 139 of the Negotiable Instruments Act and convicted thereunder. The appellate court also confirmed the conviction and modified the sentence. I find no illegality in the above judgment. In the result, the findings of the appellate court is confirmed.

There is no merit in this revision petition and it is dismissed accordingly.

Sd/-
P.D. RAJAN,
JUDGE

STK

//TRUE COPY//

P.A. TO JUDGE