IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

Crl.Rev.Pet.No. 3103 of 2006 ( )

AGAINST THE JUDGMENT IN CRA 81/2006 of ADDITIONAL SESSIONS COURT (ADHOC-1), ERNAKULAM DATED 26-04-2006

AGAINST THE JUDGMENT IN CC 1718/2003 of JUDL. MAGISTRATE OF FIRST CLASS, KOTHAMANGALAM DATED 13-01-2006

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

A.N.MOHANAN, AGED 44 YEARS,
S/O.NARAYANAN, ADATHOTTIL HOUSE, THURUTHY P.O.
NEDUNGAPRA, PERUMBAVOOR.

BY ADV. SRI.K.SUNILKUMAR

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

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1. GIRIJA SREEKUMAR,
   BRANCH MANAGER, M/S.PERIGOTTUKARA FINANCE AND
   INVESTMENT COMPANY LTD., THRISSUR.

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

BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.3103 of 2006

Dated this the 5th day of August, 2015

ORDER

This revision petition is preferred against the judgment in Crl.Appeal No.81/2006 of Additional Sessions Court (Adhoc-I), Ernakulam for offence punishable u/s.138 of the N.I.Act. The revision petitioner was convicted by the trial Court and sentenced to undergo simple imprisonment till rising of Court and to pay a compensation of ₹21,085/- with 12% interest from 27.8.2001 till the date of realisation, in default to undergo simple imprisonment for six months, which was modified in appeal.

2. The allegation of the defacto complainant/1st respondent in the trial Court was that the revision petitioner

borrowed ₹35,000/- from her firm and in discharge of the balance amount of ₹21,085/-, Ext.P1 cheque was given to her. When Ext.P1 was presented for encashment it was dishonoured for the reason of 'funds insufficiency'. Even though the 1st respondent issued a demand notice to the revision petitioner, after dishonour of the cheque, there was no payment from the side of the revision petitioner. In the circumstances the above complaint was filed by the first respondent.

3. In the trial Court, the defacto complainant was examined as PW1, who is the Manager of the firm and produced Exts.P1 to P6. The trial Court, after analysing the evidence, convicted the appellant. There was no evidence from the side of the revision petitioner to rebut the presumption.

4. The learned counsel for the revision petitioner

on 27.7.2015 submitted that the matter is settled out of Court and filing a compromise petition. Hence the case was posted on 5.8.2015 for filing compromise petition. When there was no compromise petition, I heard the appellant. He failed to give notice to the 1st respondent even after specific direction.

5. 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.

6. The first respondent was examined as PW1. She deposed that when Ext.P1 was dishonoured for the reason of 'funds insufficiency', she made a demand by giving a notice to the revision petitioner, but no payment was made by him. Exts.P2 and P3 are the dishonour memos. Ext.P4 is the copy of notice. Ext.P5 is the acknowledgment card.

Ext.P6 is the authorisation letter. PW1 deposed that he issued Ext.P4 Advocate notice calling upon the revision petitioner to pay the amounts, which was accepted by the revision petitioner and Ext.P5 is the acknowledgment card. The appellate court found that the 1st respondent succeeded in discharging the primary burden of proving that Ext.P1 cheque was issued in discharge of a debt. If that be so, a statutory presumption u/s.139 of the N.I. Act is available in favour of the holder of the cheque. The appellate Court confirmed the conviction passed by the trial Court, but modified the sentence as follows:

Revision petitioner is sentenced to imprisonment till rising of Court and to pay a compensation of ₹21,085/-, in default of payment of fine, simple imprisonment for six months. I do not find any illegality in the above order.

Therefore, there is no merit in this revision petition and it is dismissed accordingly.

P.D. RAJAN, JUDGE.

acd