

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. 3105 of 2006 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO.20/2006 of SESSIONS
COURT,THODUPUZHA DATED 13-06-2006
AGAINST THE JUDGMENT IN CC 359/2003 of J.M.F.C.,NEDUMKANDAM
DATED 22-12-2005

REVISION PETITIONER(S)/APPELLANT/ACCUSED.:

JOSEPH SEBASTIAN, IRUPPAYIL HOUSE,
MATTUKATTA KARA, AYYAPPANCOIL VILLAGE
IDUKKI DISTRICT.

BY ADV. SRI.GEORGE MATHEW

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

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1. CYRIAC JOSEPH, S/O.JOSEPH,
PANACHARAPUTHENPURAYIL HOUSE, NEDUMKANDAM KARA
KALKOONTHAL VILLAGE.
 2. STATE OF KERALA REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R2, 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.3105 of 2006

Dated this the 1st day of October, 2015

ORDER

Revision petitioner, who is the appellant in Crl.Appeal No.20/2006 on the file of Sessions Court, Thodupuzha, challenges the concurrent finding of conviction u/s.138 of the Negotiable Instruments Act (hereinafter referred to as N.I. Act). He was the accused in C.C.No.359/2003 of the Judicial First Class Magistrate, Nedumkandom for offence punishable u/s.138 of the N.I. Act. He was convicted and sentenced to simple imprisonment for six months and to pay compensation of ₹25,000/- u/s.357(3) Cr.P.C., in default of payment of compensation, he shall undergo simple imprisonment for two months. The complainant is the 1st

respondent in this revision petition.

2. The complainant's case in the trial Court was that the accused borrowed a sum of ₹25,000/- on 2.3.2003 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. The complainant demanded the amount by giving a notice in writing to the accused. Even after receipt of that notice, there was no repayment by the accused. In the circumstances, the 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 P6. The incriminating circumstances brought out in evidence were denied by the accused, while questioning him. He examined DW1 and marked ExtD1 to D4. Accused was convicted, against that, he preferred an appeal, in which the

conviction was confirmed and the sentence was modified. Being aggrieved by that, he preferred this revision.

4. The learned counsel appearing for the revision petitioner submitted that the sentence was modified by the appellate Court and he needs further time for payment of the balance amount. I heard the learned Public Prosecutor also. Notice to R1 is dispensed with.

5. The specific case of the 1st respondent in the trial Court was that Ext.P1 was issued in discharge of a debt. The evidence of PW1 shows that, when Ext.P1 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 the copy of the lawyer notice. Ext.P5 is the postal receipt. Ext.P6 is the acknowledgment card. On a close scrutiny of Exts.P1 to P6, it is clear that when Ext.P1 was presented for encashment,

it 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 can be drawn in favour of the holder of the cheque u/s.139 of the N.I. Act.

6. 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 revision petitioner admitted his signature in Ext.P1.

To rebut the presumption u/s.139 of the N.I. Act he examined DW1. The evidence of DW1 shows that while he was working in a Marketing Company, one Scaria Abraham was the Managing Director of that Company. When he joined in that company, he gave three blank cheques as a security. After resigning the job, Scaria Abraham did not return the cheques. Subsequently, he misused one of the

cheques and foisted a false case. The trial Court was of the view that the oral evidence of DW1 and Exts.D1 to D4 are not sufficient to rebut the presumption u/s.139 of the N.I. Act and convicted the accused, which was upheld by the appellate Court. I do not find any illegality in the above judgment. Therefore, the conviction u/s.138 of the N.I. Act is confirmed.

7. The appellate Court sentenced the revision petitioner to undergo imprisonment till rising of the Court u/s.138 of the N.I. Act and to pay compensation of ₹25,000/- u/s.357(3) Cr.P.C. I do not find any illegality in the above judgment. No reasons are found to interfere in the appellate Court judgment.

8. The revision petitioner is directed to surrender in the Judicial First Class Magistrate, Nedumkandom forthwith for receiving the sentence, failing which the

learned Magistrate shall issue non bailable warrant against the revision petitioner. The compensation amount of ₹25,000/- shall be disbursed to the complainant as directed by the trial Court forthwith. A sum of ₹15,000/- already deposited by the revision petitioner as per the order of this Court shall be adjusted towards the compensation amount. The revision petitioner is also directed to deposit the balance amount of ₹10,000/-, towards the compensation.

The revision petition is disposed of.

P.D. RAJAN, JUDGE.

acd

