IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

Crl.Rev.Pet.No. 3120 of 2006 ( )

AGAINST THE JUDGMENT IN CRA 558/2004 of ADDL.SESSIONS COURT, MANJERI

AGAINST THE JUDGMENT IN CC 445/2001 of J.M.F.C.,MALAPPURAM

REVISION PETITIONER(S)/APPELLANT/ACCUSED.:
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A.SARALA, AGED 43 YEARS,
W/O.SADANANDAN, ANDISSERI HOUSE, EDACHIRA,
MANNUR AMSOM DESOM, KADALUNDI P.O.,
KOZHIKODE DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE.:
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1. CHANDRAN R.P., S/O.RAMAN NAIR,
KONOOR HOUSE, RAMAPURAM P.O.

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

R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 12-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

STK

P.D. RAJAN, J.

Crl. R.P. No.3120 of 2006

Dated this the 12th day of August, 2015

ORDER

The revision petitioner is the appellant in Crl.Appeal 588/04 on the file of Additional Sessions Judge, Manjeri challenges a judgment of conviction and sentence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the 'Act'). The revision petitioner was the accused in CC 445/2001 of Judicial First Class Magistrate, Malappuram and convicted under Section 138 of the Negotiable Instrument Act and sentenced to imprisonment for 3 months and to pay a sum of Rs.60,000/- as compensation under 357 (3) Cr.P.C.

2. The facts necessary for the indictment in the trial court were that the revision petitioner borrowed a sum of Rs.60,000/- from the first respondent and in discharge of that debt he gave Ext.P1 cheque. When Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient. Therefore, first respondent give a lawyer notice and there was no repayment. In the

circumstance, first respondent filed a complaint in the trial court.

3. To prove the allegation, first respondent examined PW1 and PW2 in the court below and produced Ext.P1 to P8. The incriminating circumstances brought out in evidence were denied by the revision petitioner while questioning him. He did not adduce any defence evidence. In this circumstance, the trial court convicted him under Section 138 of the Negotiable Instruments Act.

4. After filing this revision petition, this court directed the revision petitioner to give notice to first respondent. Even after specific directions, no steps were taken against the first respondent. In this circumstance, I have perused the concurrent findings of the court below.

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. 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 within the statutory period on the date of receipt of information from the bank regarding the return of the cheque as unpaid.

6. I have gone through the judgment of the trial court. PW1 deposed that Ext.P1 was dishonoured for 'funds insufficient'. Ext.P2 is the dishonour memo. Ext.P3 is another memo received from MDC Bank. Ext.P.4 is the copy of the lawyer notice. Ext.P5 is the postal receipt. Ext.P6 is the acknowledgment. Ext.P7 is the extract of the ledger and Ext.P8 is the copy of cheque returned register.

PW2 Bank Manager, Canara Bank deposed that when Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient.

7. When Ext.P1 was dishonoured for the reason of funds insufficient, a presumption provided under Section 139 of N.I.Act can be drawn in favour of the first respondent. Apex Court in **Mandvi Co-operative Bank Ltd V. Nimesh B Thakore** (AIR 2010 SC 1402) held that a rebuttable presumption is created under Section 139 that cheque was issued by the drawer in discharge of any debt or liability owned by him to its holder. No defence evidence has been adduced by the revision petitioner to rebut the presumption under Section 139 of the Negotiable Instruments Act. The trial court and the appellate court considered the evidence of the first respondent and convicted the revision petitioner and which was confirmed by the appellate court. I find no illegality in the conviction passed by the courts below.

8. The appellate court sentenced the appellant to undergo imprisonment till rising of court and pay

compensation of Rs.60,000/- under Asection 357(3) Cr.P.C. and in default of payment of compensation, imprisonment for one month. I find no illegality in the above order and the revision petition is dismissed with the above observation. Petitioner is directed to surrender in the Judicial First Class Magistrate Court, Malappuram within 30 days from today, failing which the trial court shall issue Non-bailable Warrant.

Sd/-
P.D. RAJAN,
JUDGE

STK

//TRUE COPY//

P.A. TO JUDGE