

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

Crl.Rev.Pet.No. 1617 of 2012 ()

AGAINST THE JUDGMENT IN CRL.APPEAL 352/2010 of ADDL.DISTRICT &
SESSIONS JUDGE FAST TRACK COURT (ADHOC), MAVELIKKARA DATED 05-06-2012

AGAINST THE JUDGMENT IN CC 382/2009 of J.M.F.C.-I, HARIPAD
DATED 28-06-2010

REVISION PETITIONER/APPELLANT/ACCUSED:

FEBIN MUHAMMED
THOUFIQ, NEAR SAHIDAR MOSQUE, KOTTUKULANGARA
KAYAMKULAM.

BY ADVS.SRI.GEORGE VARGHESE (PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN

RESPONDENTS/RESPONDENTS/STATE AND COMPALINANT:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
2. SREERAJ V.K
SREEVIHAR, KARICHAL MURI, PAYIPPAD
HARIPAD, ALAPPUZHA DISTRICT-690 556.

R2 BY ADV. SRI.S.SHANAVAS KHAN
R1 BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 29-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No. 1617 of 2012

Dated this the 29th day of September, 2015

ORDER

The revision petitioner is the accused in CC No. 382/2009 on the files of the court of the Judicial Magistrate of First Class-I, Haripad.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced him to simple imprisonment for six months and to pay a compensation of Rs.2,00,000/- to the complainant under Section 357(3) Cr.PC. The appeal filed against the said conviction and sentence was allowed in part, confirming the conviction and modifying the sentence to imprisonment till the rising of the court and to pay a compensation of Rs.2,00,000/-, by the Sessions court as per judgment in Crl. Appeal 352/2010. Aggrieved by the said conviction and sentence, the revision petitioner has approached this Court with this revision petition.

3. Heard.

4. The prosecution allegation is that the revision petitioner borrowed an amount of Rs.2,00,000/- from the complainant and towards the discharge of the said liability, the revision petitioner issued Ext.P1 cheque in favour of the complainant. The complainant presented the said cheque for encashment. However, the same was dishonoured due to insufficiency of funds in the account of the revision petitioner. Statutory notice was issued on behalf of the complainant to the revision petitioner which was received by the revision petitioner. However, the revision petitioner did not make payment of the cheque amount within the statutory period or thereafter.

5. Before the trial court, PW1 was examined and Exts. P1 to P6 were marked for the complainant. Ext.D1 was marked for the revision petitioner.

6. PW1 had given evidence in tune with the contentions in the complaint. According to PW1, the revision petitioner borrowed an amount of Rs.2,00,000/- and towards the

discharge of the said liability, the revision petitioner issued Ext.P1 cheque in favour of the complainant.

7. The revision petitioner had a suggestion during the cross-examination of PW1 that the revision petitioner used to borrow money from one Abhijith, who is the relative of the complainant, and at the time of borrowing the amount, the revision petitioner used to entrust signed blank cheques with the said Abhijith and one of the said cheques had been misutilised by the complainant to file the present complaint. The said suggestion of the revision petitioner was denied by PW1. PW1 stated that the revision petitioner had signed on Ext.P1 cheque in his presence. At the time of signing Ext.P1 cheque, the said cheque was not blank. There is no material to rebut the evidence of PW1 in this regard.

8. The learned counsel for the revision petitioner relied on the decision in **Krishna Janardhan Bhat v. Dattatraya Hedge[2008(1)KLT 425(SC)]** and argued that the existence of legally recoverable debt is not a matter of presumption under Section 139 of NI Act.

The Apex Court held in **Krishna Janardhan Bhat** (supra) thus:-

“We are not oblivious of the fact that the said provision has been inserted to regulate the growing business, trade, commerce and industrial activities of the country and the strict liability to promote greater vigilance in financial matters and to safeguard the faith of the creditor in the drawer of the cheque which is essential to the economic life of a developing country like India. This, however, shall not mean that the courts shall put a blind eye to the ground realities. Statute mandates raising of presumption but it stops at that. It does not say how presumption drawn should be held to have rebutted. Other important principles of legal jurisprudence, namely presumption of innocence as human rights and the doctrine of reverse burden introduced by S.139 should be delicately balanced. Such balancing acts, indisputably would largely depend upon the factual matrix of each case, the materials brought on record and having regard to legal principles governing the same”.

9. In that case, the accused had a definite contention in his examination under Section 313 Cr.PC that the cheque in question was not executed by the accused therein. The facts

and circumstances of this case are entirely different. In the case on hand, since the revision petitioner exempted from personal appearance before the court below, the examination of the revision petitioner under Section 313 Cr.PC was also dispensed with by the trial court. However, PW1 clearly stated about the transaction which led to the issue of Ext.P1 cheque. Ext.D1 would show that after issuing Ext.P1 cheque, some payment was made by the revision petitioner in the account of the complainant. PW1 stated that the said amount was deposited in the account of PW1 to discharge the liability of the revision petitioner in connection with the borrowing of an amount of Rs.20,000/- by the revision petitioner from the complainant. There is absolutely no material before the court to rebut the evidence of PW1 in this regard.

10. After evaluating the oral and documentary evidence adduced by the complainant and the revision petitioner, the courts below concurrently found that the revision petitioner executed Ext.P1 cheque as contemplated under Section 138 of the N.I Act. The defence set up by the revision petitioner was

also repelled by the courts below. Since there is concurrent finding on facts, this Court will not be justified in interfering with the same, unless the finding is perverse or incorrect. No circumstance has been brought to my notice to indicate that the concurrent finding by the courts below is perverse or incorrect. In the said circumstances, the concurrent finding by the courts below that the revision petitioner committed the offence under Section 138 of N.I Act does not warrant any interference by this court. The appellate court had taken a very lenient view in the matter of sentence. In the said circumstances, I find no reason to interfere with the sentence as well.

In the result, this revision petition stands dismissed. However, the revision petitioner is granted six months to pay the compensation as directed by the appellate court.

Sd/-
B.SUDHEENDRA KUMAR
JUDGE

sm/