

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

Cr1.Rev.Pet.No. 2329 of 2009 ()

JUDGMENT IN S.T.NO.2944/2006 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT-II, PALAKKAD DATED 24.11.2007
JUDGMENT IN CRA 678/2007 OF THE ADDITIONAL SESSIONS JUDGE (ADHOC) III,
PALAKKAD DATED 22-01-2009

REVISION PETITIONER/APPELLANT/ACCUSED::

RAMAN, S.SP 4 110, K.W.SUB STATION,
VENNAKKARA, PALAKKAD.

BY ADVS.SRI.JIBU P THOMAS
SRI.P.S.APPU
SRI.A.R.NIMOD
SRI.C.A.ANOOP

RESPONDENTS/RESPONDENTS/NOT PARTY/COMPLAINANT::

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1. THE STATE OF KERALA
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.
 2. VENKIDESWARAN, S/O.K.P.VASU,
RESIDING AT KUPPODE HOUSE, K.S.E.B COLONY, KALLEPPULLY
PALAKKAD.

R, BY PUBLIC PROSECUTOR SRI. V.S.SREEJITH
R,R2 BY ADV. SRI.JACOB SEBASTIAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 07-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

"C.R."

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No. 2329 of 2009

Dated this the 7th day of October, 2015.

ORDER

The revision petitioner is the accused in S.T.No.2944 of 2006 on the files of the court of the Judicial Magistrate of First Class-II, Palakkad.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced him thereunder to simple imprisonment for six months and to pay a compensation of ₹95,000/- to the complainant under Section 357(3) Cr.P.C. In the appeal, the conviction under Section 138 of the Negotiable Instruments Act was confirmed. However, the sentence awarded by the trial court was modified to a fine of ₹1,00,000/- with a default clause for simple imprisonment for three months. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard both sides.

4. The prosecution allegation is that on 29.5.2006, the revision petitioner issued Ext.P1 cheque in favour of the complainant towards the discharge of the liability of the revision petitioner to the complainant. The complainant presented the said cheque for encashment. However, the same was dishonoured due to the insufficiency of funds in the account of the revision petitioner. Statutory notice was issued on behalf of the complainant, 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 court below, PW1 was examined and Exts.P1 to P3 (b) were marked for the complainant. No evidence was adduced on the side of the revision petitioner.

6. PW1 is the complainant who had given evidence in tune with the contentions in the complaint. According to PW1, the revision petitioner executed Ext.P1 cheque towards the discharge of the liability of the revision petitioner to PW1 in

connection with the borrowing of an amount of ₹95,000/-.

7. The learned counsel for the revision petitioner relied on the decision of the Apex Court in **Thomas v. Jaleel (2009 (2) KLT 990)** and argued that since the notice was served on the wife of the revision petitioner, there is no notice as contemplated under Clause (b) of Section 138 of the N.I.Act and consequently, the conviction and sentence cannot be sustained. In *Thomas (supra)*, the Apex Court held thus:

“In the present case, the notice of demand was served upon the wife of the appellant and not the appellant. Therefore, there is no escape from the conclusion that the complainant-respondent had not complied with the requirement of giving notice in terms of clause (b) of proviso to Section 138 of N.I.Act.”

8. In this case, the demand notice was proved to have been received by Smt.Lakhshmi, who is the wife of the revision petitioner. The complainant had specifically alleged in the complaint that the notice was served on the authorised representative of the revision petitioner. PW1 also stated that the notice was served on the authorised representative of the

revision petitioner. Ext.P3(b) is the acknowledgment card which would show that the notice was received as per authorisation. In *Thomas (supra)*, the wife was not authorised by the appellant to receive the letter. However in this case, there was authorisation by the revision petitioner to receive the letter on behalf of the revision petitioner. If the person authorised to receive the registered letter receives the notice of demand, it should be treated as sufficient compliance of the requirement of giving notice in terms of clause (b) of Section 138 of N.I.Act. In view of the above reason, the decision in *Thomas (supra)* has no application to the facts of this case.

9. The courts below, after evaluating the oral and documentary evidence adduced by the complainant, concurrently found that the revision petitioner executed Ext.P1 cheque as contemplated under Section 138 of 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.

10. The cheque is for an amount of ₹95,000/-. Considering the facts and circumstances of the case, I am of the view that the sentence awarded by the trial court as modified by the appellate court can be further modified to a fine of ₹95,000/- to secure the ends of justice. Accordingly, I order so.

In the result, this revision petition stands allowed in part,

(i) confirming the verdict of guilty and conviction under Section 138 of the Negotiable Instruments Act.

(ii) the sentence awarded by the courts below under Section 138 of the N.I.Act stands modified and reduced to a fine of ₹95,000/- (Rupees ninety five thousand only).

(iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for one month.

(iv) in the event of realisation of the fine, the entire amount shall be given to the complainant as compensation under Section 357 (1) (b) Cr.P.C.

The revision petitioner is granted six months time to pay the fine as requested by the learned counsel for the revision petitioner.

Sd/-
B. SUDHEENDRA KUMAR
JUDGE

Scl.