

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

Crl.Rev.Pet.No. 2443 of 2007 ()

**AGAINST THE JUDGMENT IN CRL. APPEAL 388/2004 of ADDL. SESSIONS COURT,
FAST TRACK-III, PALAKKAD**

AGAINST THE JUDGMENT IN CC 665/2001 of J.M.F.C., OTTAPPALAM

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**K.C.VELAYUDHAN,
S/O. KOTHA PACKER,
METAL INDUSTRIES LTD., SHORNUR
PALAKKAD DISTRICT.**

BY ADV. SRI.RAJESH SIVARAMANKUTTY

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

- 1. S.VINAYAKUMAR,
S/o. LATE SUKUMARAN NAIR,
AGED 54 YEARS, 16/116 RAJAM KEYILIYAD ROAD, SHORNUR
OTTAPALAM TALUK, PALAKKAD DISTRICT.**
- 2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

**R1 BY ADV. SRI.K.B.ARUNKUMAR
R2 BY PUBLIC PROSECUTOR SRI. N. SURESH**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16-
10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.2443 of 2007

Dated this the 16th of October, 2015

ORDER

Revision petitioner, who is the appellant in Crl. Appeal 388/04 on the file of Addl. Sessions Judge, Fast Track III, Palakkad challenges the concurrent findings of conviction under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'Act'). He was accused in C.C.665/2001 on the file of the Judicial First Class Magistrate, Ottappalam for offence punishable under Section 138 of the Negotiable Instruments Act. The trial court convicted the accused and sentenced to simple imprisonment for 3 months and to pay compensation of Rs.80,000/- under Section 357 Cr.P.C., in default of payment of compensation, to undergo simple imprisonment for one month.

2. The complainant's case in the trial court is that, on 20.09.01, the accused borrowed a sum of Rs.80,000/- from him and in discharge of that debt, he issued Ext.P1 cheque drawn on Nedungadi Bank, Kulappully. When the

cheque was presented for encashment, it was dishonoured for the reason of funds insufficient. The complainant demanded the due amount by issuing a lawyer notice to the accused. Even after receipt of that notice, there was no repayment. In the circumstance, he filed a complaint in the trial court.

3. During trial prosecution examined PW1 and his documents were marked as Exts. P1 to P5. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. He did not adduce any evidence in the trial court. After analyzing the evidence on record, the trial court convicted the accused. Against that he preferred an appeal, which was dismissed by the appellate court. Being aggrieved by that, he approached this court with this revision petition.

4. 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.

5. The evidence of PW1 shows that Ext.P1 was issued in discharge of a debt. When it was presented for encashment it was dishonoured for the reason of funds

insufficient. Ext.P2 is the dishonour memo. He demanded the due amount by issuing Ext.P3 lawyer notice. Ext.P3(a) is the copy of lawyer notice. Ext.P3(b) is the Postal receipt and Ext.P3(c) is the acknowledgment card. Ext.P4 is the reply notice and Ext.P5 is the copy of the extract of the ledger. While analyzing the evidence of PW1 and Exts.P1 to P5, it is clear that Ext.P1 was dishonoured for the reason of funds insufficient. When the cheque is dishonoured for the reasons stated under Section 138 of the Negotiable Instruments Act, a presumption under Section 139 of the Negotiable Instruments Act can drawn in favour of the holder of the cheque.

6. If complainant proves that the cheque was received for the reasons stated under Section 138 of the N.I. Act, the presumption under Section 139 of the Negotiable Instruments Act starts operating and burden shifts to the accused. 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”.

No rebuttel evidence was adduced by the revision petitioner in this case. The signature in Ext.P1 was admitted by the revision petitioner. Therefore, a presumption can be drawn in favour of the holder of the cheque. The courts below considered the decisions of Apex court reported in **Hiten P. Dalal v. Bratindranath Banerjee (AIR 2001 SC 3879 and Beena v. Muniappan (AIR 2001 SC 2995).**

The trial court considered the legal aspects and convicted the revision petitioner which was approved by the appellate court. I find no illegality in the findings of the courts below. The appellate court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment for one day till rising of court and to pay compensation of Rs.80,000/- under Section 357 Cr.P.C., in default of

payment of compensation, to undergo simple imprisonment for one month. The revision petitioner was expired on 27.08.2010 and legal heirs were not impleaded. I find no illegality in the above judgment. There is no merit in this revision petition and it is dismissed accordingly.

STK

Sd/-
P.D. RAJAN,
JUDGE

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P.A. TO JUDGE