

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. 205 of 2008 ()

**AGAINST THE JUDGMENT IN CRL.APPEAL 535/2006 of SESSIONS COURT,
TRIVANDRUM**

AGAINST THE JUDGMENT IN ST 216/1998 of J.M.F.C.- I,TRIVANDRUM

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**RAJENDRAN NAIR
PADANAYIL KULATHARA VEEDU, KURUPUZHA VILLAGE
NEDUMANGAD TALUK, THIRUVANANTHAPURAM.**

**BY ADVS.SRI.G.P.SHINOD
SRI.RAM MOHAN.G.
SRI.MANU V.**

RESPONDENT(S)/COMPLAINANT AND STATE:

- 1. PRAVEEN KUMAR,
S/o.PEETHAMBARAN,
CHANDRA VIHAR, T.C.16/605, ESWARAVILASOM ROAD,
JAGATHY, VAZHUTHACAUD, THYCAUD VILLAGE,
THIRUVANANTHAPURAM.**
- 2. STATE OF KERALA REPRESENTED BY ITS
PUBLIC PROSECUTOR AT THE HIGH COURT OF KERALA
AT ERNAKULAM.**

**R1 BY ADV. SRI.NAGARAJ NARAYANAN
ADV. SRI.NAIR AJAY KRISHNAN
ADV. SRI.RAJAN VELLOTH
ADV. SRI.SAIJO HASSAN
ADV. SRI.A.S.SABU**

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.205 of 2008

Dated this the 16th of October, 2015

ORDER

Revision petitioner, who is the appellant in Crl. Appeal 535/06 on the file of the Sessions Judge, Trivandrum challenges the concurrent findings of conviction under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'Act'). He was accused in S.T.216/1998 on the file of the Judicial First Class Magistrate-1, Trivandrum for offence punishable under Section 138 of the Negotiable Instruments Act. The accused was convicted and sentenced to simple imprisonment for 3 months and to pay compensation of Rupees One lakh, in default, to undergo simple imprisonment for 20 days.

2. The complainant's case in the trial court is that, the accused borrowed a sum of Rs.1,00,000/- and in discharge of that debt he issued two cheques for Rs.50,000/- each drawn on Indian Bank, Madras,

Tamilnadu. When the cheques were presented for encashment, it was dishonoured for the reason of funds insufficient. The complainant demanded the due amount by giving a notice in writing to the accused. Even after receipt of that notice, there was no repayment. In the circumstance, a complaint was filed in the trial court.

3. To prove the allegation, the complainant was examined as PW1 and his documents were marked as Exts. P1 to P12. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. He examined DW1 and marked Exts.D1 and D2 in support of his defence evidence. The trial court after sifting and weighing the evidence on record convicted the accused. Against that he preferred an Appeal. The appellate court confirmed the conviction and dismissed the appeal. Being aggrieved by that, he approached this court with this revision petition.

4. The learned counsel appearing for the revision petitioner contended that there was no transaction with

the first respondent, on the other hand he borrowed Three lakhs rupees from the brother of the first respondent, at that time, he gave signed five cheque leaves. By misappropriating two cheque leaves, he foisted a false case, which is clear from the evidence of DW1. Hence, the conviction is unsustainable in law.

5. The learned counsel appearing for the first respondent contended that, the transaction with the brother of the first respondent was not proved. The rebuttal evidence of DW1 is unbelievable and the contention raised by the revision petitioner is unsustainable in law. There is no reason to interfere in the findings of the courts below.

6. The concurrent findings of the conviction under Section 138 of the Negotiable Instrument Act is being challenged in this matter. The complainant who is the first respondent in the trial court contended that, in discharge of a debt, accused issued 2 cheque leaves each for Rs.50,000/- Ext.P1 and P2 are the certified copies of

the cheque leaves. When the original cheques were presented for encashment, it was dishonoured for the reason of funds insufficient. Ext.P3 and Ext.P4 are the dishonour memos. Ext.P5 is the intimation given from the Bank. First respondent gave a notice in writing to the accused. Ext.P6 is the copy of the lawyer notice. Ext.P7 is the postal receipt and Exts.P8 and P9 are the acknowledgment cards. A perusal of Ext.P3 and P4 shows that the cheques were 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 is drawn in favour of the holder of the cheque.

7. When 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”.

8. Revision petitioner examined DW1 to rebut the presumption under Section 139 of the N.I. Act and he also produced Exts.D1 and D2. Even though he contended that Ext.D1 was issued in favour of the brother of the first respondent, DW1 admitted that he had independent transaction with the revision petitioner. The evidence of DW1 and Exts.D1 and D2 are not sufficient to rebut the presumption. The courts below relied the decisions in **Beena V. Muniappan (AIR 2001 SC 2995)**, **Narayana Menon V. State of Kerala 2006 (3) KLT 404 (SC)** and **Rangappa V. Sri Mohan (2010(11) SCC 441)** and convicted the accused. I find no illegality in the findings of the courts below. Therefore, the conviction passed under Section 138 of the Negotiable Instruments Act is confirmed. The trial court sentenced the revision

petitioner to undergo simple imprisonment for three months and pay a compensation of Rs.1,00,000/- under Section 357(3) Cr.P.C., in default to undergo simple imprisonment for 20 days, which needs interference. Considering the nature of transaction and conduct of the accused, the sentence imposed by the trial court is modified as follows;

The revision petitioner is sentenced to imprisonment till rising of court under Section 138 of the Negotiable Instruments Act. He is also directed to pay compensation of Rs.1,00,000/- under Section 357(3) Cr.P.C., in default of compensation, simple imprisonment for 30 days. If compensation amount is realized, it shall be disbursed to the first respondent. The revision petitioner is directed to surrender in the trial court to undergo the modified sentence, failing which, the Judicial First Class Magistrate-1, Trivandrum shall issue Non-bailable Warrant. The revision petitioner has been given 3 months time to pay the compensation amount and the execution of the

sentence shall be effected only after the expiry of 3 months from today.

STK

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P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE