

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

Crl.Rev.Pet.No. 2911 of 2005 ()

**AGAINST THE JUDGMENT IN CRA 278/2004 of SESSIONS COURT,
KOZHIKODE**

AGAINST THE JUDGMENT IN CC 651/2000 of J.M.F.C., KOYILANDY

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**SUNEETHI,
D/o.KUNHIRAMAN,
'PANCHAJANYAM' HOUSE,
MELOOR AMSOM DESOM
KOYILANDY TALUK.**

**BY ADVS.SRI.MANJERI SUNDER RAJ
SRI.B. PREMNATH (E)**

RESPONDENT(S):

- 1. BIJU,
S/o.VASU,
ASSARIKANDI HOUSE,
MELOOR AMSOM DESOM
KOYILANDY TALUK.**
- 2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.**

R2 BY PUBLIC PROSECUTOR SRI.N. SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 03-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

STK

P.D. RAJAN, J.

Crl.R.P.2911 of 2005

Dated this the 3rd day of September, 2015

ORDER

The revision petitioner is the appellant in Crl. Appeal 278/2004 of the Sessions Court, Kozhikode challenges the judgment of concurrent conviction under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'Act') He was sentenced to imprisonment till rising of court and compensation of Rs.5000/-. Aggrieved by that the accused preferred this revision petition.

2. The complainants case in the trial court was that, in discharge of a liability with regard to service of a lorry, accused issued a cheque for Rs.5000/-. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. First respondent demanded the amount by giving a notice in writing to the accused, there was no payment. In this circumstance, the above case was filed in the trial court.

3. To prove the offence, first respondent examined as PW1 and produced Exts.P1 to P5 as documentary

evidence. Ext.X1 series was also marked in the trial court. The trial court convicted the accused and sentenced her to undergo simple imprisonment for six months and to pay compensation of Rs.5000/- under Section 357(3) Cr.P.C., against that she preferred Crl.Appeal 278/04 before Sessions Court, Kozhikode, where the sentence was modified and against that she preferred this revision petition. 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 1st respondent. In this circumstance, I heard the learned Public Prosecutor and the revision petitioner.

4. The power of the revisional jurisdiction of the High Court in criminal cases is narrower and limited than its appellate power, which is discretionary and it cannot be invoked as of right as in the case of appellate jurisdiction. The object of conferring revisional power is to clothe the High Court with a jurisdiction of the general supervision in order to correct grave miscarriage or failure of justice

arising from erroneous or defective orders. While exercising this power, it is justified only to set right grave failure of justice and not merely to rectify every error. The fact that the lower court has taken a wrong view of law or misapprehended the evidence on record cannot be a reason to interfere unless it has resulted in grave justice.

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. 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.

6. PW1 deposed that in discharge of a liability, Ext.P1 cheque was issued. When it was presented for encashment, it was dishonoured for the reason 'funds insufficient'. Ext.P2 is the dishonour memo. Ext.P3 is the copy of the lawyer notice and Ext.P3(a) is the postal receipt. Ext.P4 is the acknowledgment. Ext.P5 is the reply notice. X1 series is the copy of the ledger extract. Ext.P2 shows that cheque was dishonoured for the reason of funds insufficient.

7. Section 139 of the Negotiable Instruments Act 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”.

When complainant proves the existence of a legally enforceable debt, the presumption under Section 139 of the Negotiable Instruments Act starts operating and burden shifts to the accused. The courts below considered the decisions of Apex court reported in **Hiten P. Dalal v. Bratindranath Banerjee (AIR 2001 SC 3879, Beena v. Muniappan (AIR 2001 SC 2995) and Narayana Menon v. State of Kerala 2006 (3) KLT 404 (SC)**. Therefore, accepting the law settled by the apex court, the initial burden upon the revision petitioner to rebut the presumption was not properly discharged and the trial court convicted the revision petitioner. I find no illegality in the findings.

8. Therefore the courts below opined that Ext.P1 was issued in discharge of a debt, revision petitioner did not adduce any rebuttal evidence. In the absence of such rebuttal evidence, the trial court and appellate court opinioned that Ext.P1 was issued in discharge of a debt

and presumption can be drawn in favour of the holder of the cheque and convicted the revision petitioner. I find no illegality in the above order. In the circumstance, the conviction under Section 138 of the N.I. Act is confirmed and revision petitioner is sentenced to imprisonment till rising of court and pay a fine of Rs.5000/- as compensation under Section 357(3) Cr.P.C. is also confirmed. The revision petitioner is directed to surrender before trial court within 30 days from today to undergo the sentence, failing which, Judicial First Class Magistrate , Koyilandy shall issue Non-bailable Warrant against the accused.

There is no merit in this revision petition and it is dismissed accordingly.

STK

//TRUE COPY//

P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE