

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

Cr1.Rev.Pet.No. 135 of 2011

[AGAINST THE JUDGMENT DATED 16-11-2010 IN CRA 151/2007 of ADDITIONAL
SESSIONS COURT, IRINJALAKUDA

AGAINST THE JUDGMENT DTD.22.2.2007 IN ST 549/2005 of COURT OF
ADDITIONAL MUNSIFF & JUDICIAL FIRST CLASS MAGISTRATE,IRINJALAKUDA]

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

MINI MOHANAN,
W/O.PATTANMARVALAPPIL MOHAN, NIREVARAM P.O.
PANAMARAM DESOM, MANANTHAVADY TALUK, WAYANAD.

BY ADVS.SRI.BABU CHERUKARA
SRI.ANZAR BASHEER
SRI.PRATHEUSH.M.ANAND

RESPONDENTS (S)/RESPONDENTS/COMPLAINANT:

1. K.S.KOCHUMON, S/O.SANKU,
KALLUPALATHINGAL HOUSE, VADAKKUMURY
VARANTHARAPPILLY P.O., MUKUNDAPURAM TALUK, PIN-680303

2. STATE OF KERALA,
REP.BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
KOCHI-31

R1 BY ADV. SRI.V.M.KRISHNAKUMAR
R1 BY ADV. SMT.P.R.REENA
R2 BY PUBLIC PROSECUTOR SMT.LILLY LESLIE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 27-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.K.MOHANAN, J.

Crl.R.P.No. 135 of 2011

Dated this the 27th day of March, 2015

ORDER

The accused in a prosecution for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the N.I.Act') has come up in revision challenging the judgment of the trial court as well as the lower appellate court by which she is found guilty under Section 138 of the N.I.Act.

2. The case of the complainant is that out of business deal between himself and the accused, who is a lady, the accused issued cheque for ₹75,000/- drawn in favour of the complainant, which when presented for encashment, dishonoured on the ground of insufficiency of fund in the account maintained by the accused and consequently, according to the complainant, though a statutory notice was caused to be issued to the accused, she refused to accept the notice and no amount was repaid and therefore, according to the complainant, the

accused has committed the offence punishable under Section 138 of the N.I.Act.

3. With the above allegation, the complaint was originally lodged before the Judicial First Class Magistrate Court, Irinjalakuda wherein cognizance was taken and thereafter, the complaint was transferred to the present trial court viz., the court of Additional Munsiff and Judicial First Class Magistrate, Irinjalakuda. During the trial of the case, the complainant himself was examined as PW1 and Exts.P1 to P7 were marked. No evidence whatsoever was adduced from the side of the accused. The trial court, as per its impugned judgment, found that though there is some incongruity between the averments in the proof affidavit and the matters brought out in the cross-examination, that are not sufficient to corrode the case of the complainant and finally found that the accused has failed to rebut the presumption under Section 139 of the N.I.Act. Thus, it was further held that Ext.P1 cheque is one drawn by the accused for the discharge

of the liability as alleged and thus, she was found guilty for the offence under Section 138 of N.I.Act. Consequently, she was directed to pay to the complainant a sum of ₹75,000/-, the cheque amount, under Section 357(3) of Cr.P.C., in default of payment of which she was directed to undergo simple imprisonment for a period of one month.

4. Challenging the above finding, the order of conviction and sentence, though the accused preferred an appeal, by judgment dated 16.11.2010 in Crl.A.No.151/2007, the court of Sessions, Thrissur dismissed the appeal and the appellant/accused was convicted and sentenced to undergo imprisonment till rising of the court and she was also directed to pay compensation of ₹75,000/- to the complainant under Section 357(3) of the Cr.P.C. and in default, she was directed to undergo simple imprisonment for a period of one month. It is the above finding, conviction and sentence that are challenged in this petition.

5. Heard Sri.Babu Cherukara, the learned counsel appearing for the petitioner and Advocate Sri.V.M.Krishna Kumar, the counsel appearing for the respondent.

6. The counsel appearing for the revision petitioner vehemently submitted that the complainant has miserably failed to establish by adducing evidence about the transaction, that allegedly taken place between the complainant and the accused. But, the court below, ignoring the above lacuna in the case of the complainant, proceeded to convict the accused. It is pointed out by the learned counsel for the petitioner that the complainant has miserably failed to plead and prove the transaction by which the liability is created upon the accused to issue the cheque in question. After taking me through the evidence of the complainant, the learned counsel submitted that the complainant has miserably failed to prove the execution of the cheque and also failed to substantiate the transaction creating liability upon the accused to issue a cheque, thus in toto, the submission of the learned

counsel for the revision petitioner is that the complainant has miserably failed to establish a legally enforceable debt due from the accused towards the complainant and therefore, the finding of the trial court as well as the appellate court that the accused failed to rebut the presumption is unwarranted and incorrect.

7. On the other hand, the learned counsel for the respondent/complainant has vehemently submitted that the accused has not denied the execution and issuance of the cheque and the trial court as well as the lower appellate court are justified in convicting the accused. According to the learned counsel for the respondent/complainant, there is no explanation from the part of the accused as to how her signed cheque came in the hands of the complainant and therefore, the courts below are correct in holding that the accused failed to rebut the presumption. So, according to the learned counsel, this Criminal Revision Petition is liable to be dismissed as the same bears no merit.

8. I have carefully considered the submission made by the counsel appearing for the revision petitioner as well as the respondent. I have also perused the evidence and materials available on record.

9. Though I have perused the complaint, there is no specific pleading about the transaction claimed between the complainant and the accused. The only claim is that the accused issued a cheque for ₹75,000/- towards the amount due on account of the business deal between the complainant and the accused. No particulars of the said transaction are pleaded and no evidence is adduced to substantiate such claim as well. In this juncture, it is relevant to note that when the complainant was cross-examined, the defence succeeded in bringing out certain facts connected with some other transaction. As per the version of PW1, during the cross-examination, there was some business deal between the husband of the accused and the firm conducted by the wife of the complainant. Suffice to say, in the complaint, there is no whisper about those facts. During the cross-

examination, the complainant has admitted that he did not witness execution of Ext.P1 cheque. According to him, he has no acquaintance with the accused, who is a lady. He had also categorically deposed before the court below that the cheque in question was brought by the husband of the accused. From the above evidence of PW1 itself, it is crystal clear that he is not a witness for the alleged execution of the cheque in question. Though there is no whisper in the complaint about the business deal between the husband of the accused and the wife of the complainant, it is brought on record that there was some other transaction and that the complainant has not witnessed the execution of the cheque. If that be so, it can be safely came to a conclusion that the cheque in question is not executed connected with the alleged transaction between the complainant and the accused. As I indicated earlier, it is relevant to note that no details of the business transaction between the complainant and the accused have been either stated in the complaint or in the proof affidavit. But

the evidence on record shows that there was some other transaction between the wife of the complainant and the husband of the accused. In the light of the above evidence, it can be seen that the accused has succeeded in creating doubt against the veracity of the case put forward by the complainant. In the absence of any pleadings towards the execution of the cheque and the evidence in support of such transaction, I am of the view that the complainant is not entitled to get the presumption as contemplated under Section 139 of the N.I.Act and as such, no duty is cast upon the accused to rebut such presumption. If that be so, I am unable to support the findings of the trial court as well as the lower appellate court and to concur the conviction recorded against the revision petitioner and consequently, the conviction and sentence recorded by the courts below against the accused are liable to be interfered with.

In the result, this Criminal Revision Petition is allowed setting aside the judgment dated 16.11.2010 in Crl.A.No.151 of 2007

of the court of Sessions, Thrissur and the judgment dated 22.2.2007 in S.T.No.549/2005 of the court of Additional Munsiff and Judicial First Class Magistrate, Irinjalakuda and the revision petitioner/accused is acquitted of all the charges levelled against her. This Criminal Revision Petition is allowed accordingly. As the above Criminal Revision Petition is allowed and the revision petitioner is acquitted, she is entitled to get released of the amount deposited by her in the trial court as per order dated 7.2.2011 of this Court in Crl.M.A.No.400/2011 in Crl.R.P.No.135/2011 and accordingly, there will be a direction to the trial court that in case an application is filed for the withdrawal of the said amount, the same shall be allowed and the amount shall be released in favour of the revision petitioner, without any fail.

V.K.MOHANAN,
Judge

MBS/

Crl.R.P.No.135 Of 2011

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