

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

Crl.Rev.Pet.No. 3727 of 2006 ()

**AGAINST THE JUDGMENT IN CRL.APPEAL 392/2005 of ADDL. SESSIONS COURT
FAST TRACK (ADHOC-1), KOZHIKODE**

AGAINST THE JUDGMENT IN C.C. 151/2002 of C.J.M., KOZHIKODE

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

**KALoor MAYANADATH SURESHBABU
S/O.KALoor MAYANADATH BALAKRISHNAN, 'DHANYAM'
NEAR SENT VINCENT COLONY, KOZHIKODE.**

**BY ADVS.SRI.M.ASOKAN
SRI.DEVAPRASANTH.P.J.**

RESPONDENT(S)/COMPLAINANT::

**1. V.SIVAPRASAD,
S/o.VISWANATHAN,
FIELD VIEW COLONY, HOUSE NO.1,
P.O. CHEVAYUR,
KOZHIKODE.**

**2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.**

R2 BY PUBLIC PROSECUTOR SRI. N. SURESH

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20-
10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.3727 of 2006

Dated this the 20th of October 2015

ORDER

Revision petitioner, who is the appellant in Crl. Appeal 392/05 on the file of the Addl. District and Sessions Judge, Fast Track (Adhoc-1), Kozhikode challenges the concurrent conviction under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the 'N.I.Act'). He was accused in C.C.151/2002 on the file of the Chief Judicial Magistrate, Kozhikode and convicted for offence punishable under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment for six months and to pay a compensation of Rs.1,00,000/- under Section 357(3) Cr.P.C., in default of payment of compensation, simple imprisonment for two months.

2. The complainant's case in the trial court is that, the accused borrowed a sum of Rupees One lakh from him and in discharge of that debt, he issued Ext.P1

cheque. When the cheque was 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, which was received by the accused and no repayment thereafter. In the circumstance, a complaint was filed in the Chief Judicial Magistrate, Kozhikode.

3. During trial, complainant 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. The accused examined DW1. The trial court after sifting and weighing the evidence on record convicted the accused. Against that they preferred an Appeal, in which, appellate court modified the sentence to imprisonment till rising of court and upheld the compensation. Being aggrieved by that, he approached this court with this revision petition.

4. The learned counsel appearing for the revision petitioner prayed for leniency in sentence. The learned Public Prosecutor has no objection in granting leniency

and submitted that, appellate court has given maximum leniency and further interference is not necessary.

5. It is clear from the oral evidence of PW1 that when Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient. Ext.P2 is the dishonour memo. Ext.P3 is the intimation. Complainant issued a lawyer notice and Ext.P4 is the copy of the lawyer notice. Ext.P4(1) is the postal receipt. Ext.P4(2) is the acknowledgement card. Ext.P5 is the extract of the ledger. Analyzing the oral evidence of PW1 and Ext.P1 to P4, it is found that the cheque was dishonoured for the reason of funds insufficient. When a cheque is dishonoured for the reason of funds insufficient, a presumption under Section 139 of the N.I. Act can be drawn in favour of the holder of the cheque.

6. When complainant proves that the cheque was received for the reasons stated under Section 138 of the N.I. Act, a 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”.

It is the responsibility of the revision petitioner to rebut the presumption under Section 139 of the N.I. Act. The revision petitioner examined DW1 in the trial court to rebut the presumption under Section 139 of the N.I. Act. The oral evidence of DW1 is not sufficient to rebut the presumption and trial court observed that the cheque was issued in discharge of a debt. 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, trial court and appellate court considered these infirmities and convicted the revision petitioner. I find no illegality in the findings of the courts below.

The appellate court convicted the revision petitioner

under Section 138 of the N. I. Act and sentenced him to imprisonment till rising of court and pay compensation of Rs.1,00,000/- under Section 357(3) Cr.P.C., in default of payment of compensation, simple imprisonment for two months. I find no illegality in the above judgment and no further interference is necessary. There is no merit in this revision petition and it is dismissed. The first revision petitioner is directed to appear before Chief Judicial Magistrate, Kozhikode to undergo the modified sentence, failing which the trial Magistrate shall issue non-bailable warrant against the accused, forthwith.

STK

//TRUE COPY//

P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE