IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

Crl.Rev.Pet.No. 867 of 2008 ( )

AGAINST THE JUDGMENT IN Crl.Appeal NO.206/2006 of ADDL. SESSIONS JUDGE (ADHOC)-I, KOLLAM DATED 31.10.2007.
AGAINST THE JUDGMENT IN CC 79/2003 of JUDICIAL FIRST CLASS MAGISTRATE COURT - II, KANJIRAPPALLY DATED 14.03.2006

REV.PETITIONER/RESPONDENT/COMPLAINANT.:

THOMAS JOSEPH, S/O. JOSEPH,
KAITHATHARAYIL HOUSE, NERCHAPPARA, ERUMELY.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENT(S)/APPELLANT/ACCUSED & STATE.:

1. V.J.JOSEPH, VETUVAYALIL HOUSE,
   KODAKARA P.O., THRISSUR.

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

R2, BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.867 of 2008

Dated this the 21st day of August, 2015

ORDER

The revision petitioner, who is the appellant in Crl.Appeal No.206/2006 of Additional Sessions Court (Adhoc-I), Kottayam, challenges the judgment of conviction u/s.138 of the Negotiable Instruments Act (hereinafter referred to as N.I. Act). He was the accused in C.C.No.79/2003 and he was convicted u/s.138 of the N.I. Act and sentenced to undergo simple imprisonment for five months and to pay compensation of ₹50,000/- u/s.357(3) Cr.P.C, in default of payment of compensation, simple imprisonment for one month. Against that, he preferred the above Crl.Appeal, where the conviction was confirmed and sentence was modified. Being aggrieved by that, he preferred this revision. Complainant is the 1st respondent in this revision petition.

2. Complainant's case in the trial Court was that the revision petitioner purchased timber for ₹1,15,000/- from his depot and made a part payment for the balance amount of ₹85,000/-, he gave Ext.P1 cheque, when it was presented for encashment, it was dishonoured for the reason of funds insufficient. The complainant demanded the amount by issuing a notice to the accused/revision petitioner and he failed to pay the due amount. Hence, the above complaint.

3. To prove the offence, the complainant was examined as PW1. His documents were marked as Exts.P1 to P7. The incriminating circumstances brought out in evidence were denied by the accused, while questioning him

u/s.313 Cr.P.C. He did not adduce any defence evidence. After analysing the evidence on record, the trial Court convicted the 1st respondent.

4. After filing this revision petition, this Court directed the revision petitioner to give notice to R1. On 20.7.2011, the learned counsel for the revision petitioner submitted that he will take earnest effort to take steps against the 1st respondent. But, no steps had been taken till 11.8.2015. Again, on 11.8.2015, notice by special messenger to R1 was ordered. Today, when the matter came up for hearing, the learned counsel for the revision petitioner submitted that even though earnest efforts were made to trace out the whereabouts of the 1st respondent, he could not trace out the same. Hence, I have heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

5. To prove the offence, the complainant was examined as PW1. His evidence 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. Ext.P3 is the intimation. He sent a lawyer notice to the accused. Ext.P5 is the copy of the lawyer notice. Ext.P4 is the postal receipt. Ext.P6 is the postal acknowledgment card. Ext.P7 series are bank records. A perusal of Exts.P1 to P7 shows that, when cheque was presented for encashment, it was dishonoured for the reason of funds insufficient. From the oral evidence of PW1 also, it is clear that the cheque was issued in discharge of a debt. When cheque is dishonoured for the reason of funds insufficient, a presumption u/s.139 of the N.I. Act can be drawn in favour of the holder of the cheque.

6. 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".

Apex Court in **Anil Hada V. Indian Acrylic Ltd** (AIR 2000 SC 145) held that a rebuttable presumption is created under Section 139 that cheque was issued by the drawer in discharge of any debt or liability owned by him to its holder. The same principle was followed in **Mandvi Co-operative Bank Ltd V. Nimesh B Thakore** (AIR 2010 SC 1402). No rebuttal evidence has been adduced by the revision petitioner in this case. Therefore, the trial Court convicted the accused u/s.138 of the N.I. Act, which was upheld by the Appellate Court. I do not find any illegality in the judgment of the Court below. The Appellate Court confirmed the conviction passed by the trial Court and modified the sentence to imprisonment till rising of the Court and to pay compensation of ₹50,000/- u/s.357(3) Cr.P.C. , in default of payment of compensation, simple imprisonment for one month. I do not find any illegality in the above judgment. Therefore, there is no merit in this revision petition and it is dismissed accordingly.

P.D. RAJAN, JUDGE.

acd