

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

Crl.Rev.Pet.No. 4189 of 2006 ()

AGAINST THE JUDGMENT IN CRA 4/2005 of ADDL.SESIONS (FAST TRACK
COURT NO.III-ADHOC), MANJERI DATED 00-00-0000

AGAINST THE JUDGMENT IN CC 375/2001 of J.M.F.C.,MALAPPURAM
DATED 07-12-2004

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

K.ABDULLA, S/O.M.HAJI,
HILL RESIDENCY, IRIKKOOR POST, KANNUR DISTRICT.

BY ADVS.SRI.P.S.SREEDHARAN PILLAI
SMT.C.G.PREETHA

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

-
1. SHAMSUDEEN, S/O.HASSANKUTTY HAJI,
ZEENATH MANZIL, PO. KODOTTY, MALAPPURAM.
 2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY GOVERNMENT PLEADER SMT. SAREEN GEORGE.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 10-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.4189 of 2006

Dated this the 10th day of August, 2015

ORDER

The revision petitioner challenges the judgment in Crl.Appeal No.4/2005 of Additional District and Sessions Judge, (Fast Track Court No.III (Adhoc)], Manjeri. The revision petitioner was convicted in C.C.No.375/2001 of Judicial First Class Magistrate Court, Malappuram for offence punishable u/s.138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for one year and directed to pay compensation of ₹5 lakhs, in default of payment of compensation, simple imprisonment for two months.

2. The facts given rise to the indictment were that

the revision petitioner gave a cheque for ₹5 lakh in favour of the 1st respondent drawn on Canara Bank, Irikkur Branch. When it was presented for encashment through Manjeri Co-operative Urban Bank, Kondotty branch, it was dishonoured for the reason for 'funds insufficient'. The 1st respondent issued a lawyer notice to the revision petitioner. Notice was returned as 'unclaimed'. Thereafter, he filed the complaint in the trial Court.

3. To substantiate the allegation, the 1st respondent examined as PW1. His documents were marked as Exts.P1 to P6. The incriminating circumstances brought out in evidence were denied by the revision petitioner, while questioning him u/s.313 Cr.P.C. He did not adduce any defence evidence. In the circumstances, the trial Court convicted him.

4. Several directions were issued to the revision

petitioner to give notice to the 1st respondent, but there was no response from the side of the revision petitioner. Finally, on 28.7.2015, as per the submission made by the learned counsel appearing for the revision petitioner, this Court directed to issue notice on the 1st respondent, by special messenger. But, no steps have been taken by the revision petitioner so far. In the circumstances, I have perused the documents to fine out whether the courts below have committed any irregularity, illegality or impropriety in the findings of it.

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. To prove the allegation, the 1st respondent was examined as PW1. His evidence shows that Ext.P1 was

issued in discharge of a legally enforceable debt. When it was presented for encashment, it was dishonoured for the reason of 'funds insufficiency'. Exts.P2 and P3 are the dishonour memos. He sent a lawyer notice, after dishonour of the cheque. Ext.P4 is the lawyer notice. Ext.P5 is the postal receipt. Ext.P6 is the acknowledgment card. The trial Court was of the view that there was proper compliance of the statutory formalities provided u/s.138 of the N.I. Act. Then the presumption provided u/s.139 of the Act will automatically attract in the case highlighted by the 1st respondent. The revisional jurisdiction of the High Court is entirely discretionary and it can be used for the purpose of satisfying the correctness, legality or propriety of the finding and sentence or order of the courts below. In the light of the statutory presumption, the revision petitioner was convicted. In the absence of

any rebuttal evidence, I do not find any illegality, irregularity or impropriety in the findings of conviction recorded by the trial Court and I upheld that findings. However, considering the nature of offence, the sentence is modified as follows:

The revision petitioner is sentenced to undergo imprisonment till rising of the Court and directed to pay compensation of ₹5 lakhs u/s.357(3) Cr.P.C., in default of payment of compensation, simple imprisonment for six months.

The criminal revision petition is disposed of as above.

P.D. RAJAN, JUDGE.

acd

