

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

Crl.Rev.Pet.No. 4445 of 2006 ()

AGAINST THE JUDGMENT IN CRL.APPEAL 344/2004 of SESSIONS
COURT,PATHANAMTHITTA DATED 31-08-2006
AGAINST THE JUDGMENT IN ST 106/2003 of C.J.M.PATHANAMTHITTA
DATED 18-10-2004

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

M.A.RASHEED, S/O.AHAMMED RAWTHER,
MELEVEETIL, MANGARAM, KONNI.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENT(S)/RESPONDENT/COMPLAINANTS:

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1. ANIL KUMAR.G.,
CHEEKKANAL PUTHEN VEEDU, MANGARAM, KONNI.
 2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. N. SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 17-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.4445 of 2006

Dated this the 17th day of November, 2015

ORDER

Revision petitioner, who is the appellant in Crl.Appeal No.4445/2006 on the file of Sessions Judge, Pathanamthitta, challenges the concurrent conviction u/s.138 of the Negotiable Instruments Act (hereinafter referred to as the N.I. Act). He was the accused in S.T.No.106/2003 of Chief Judicial Magistrate, Pathanamthitta, u/s.138 of the N.I. Act, he was convicted and sentenced to pay fine of ₹1 lakh, in default of payment of fine, simple imprisonment for six months. Against that, he preferred the above appeal, in which the conviction was confirmed, but modified the default sentence into simple imprisonment for three

months. Being aggrieved by that, the accused preferred this revision petition.

2. The complainant is the 1st respondent in this revision petition. The complainant's case in the trial Court was that the accused borrowed a sum of ₹1 lakh and in discharge of that debt, he issued Ext.P1 cheque dated 10.2.2003. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. The complainant demanded the amount by giving a notice in writing. Even after receipt of notice, there was no repayment. In the circumstances, the above complaint was filed in the trial Court.

3. To prove the offence, the complainant was examined as PW1 and his documents were marked as Exts.P1 to P6. The incriminating circumstances brought out in evidence were denied by the accused, while

questioning him. He did not adduce any defence evidence.

The trial Court convicted him.

4. The learned counsel for the revision petitioner contended that the sentence imposed by the appellate Court is to be modified.

5. The revisional jurisdiction can be used for the purpose of satisfying itself to the correctness, legality or propriety of any finding, sentence or order of the courts below. In this context, I have examined the concurrent findings u/s.138 of the N.I. Act by the Courts below. PW1 deposed 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 and Ext.P3 is the intimation. He demanded the amount by giving a notice in writing. Ext.P4 is the copy of the lawyer notice. Ext.P5 is the postal

receipt. Ext.P6 is the acknowledgment card. A perusal of Exts.P1 to P2 shows that the cheque was dishonoured for the reason of funds insufficient. When cheque is dishonoured for the reasons stated u/s.138 of the N .I. Act, a presumption u/s.139 of the N.I. Act can be drawn in favour of the holder of the cheque.

6. Section 139 of the N.I. 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".

The principle drawing presumptions has been explained by the Apex Court in Beena v. Muniappan (AIR 2001 SC 2995). Apex Court in three-Judge Bench judgment in Rangappa v. SriMohan [(2010) 11 SCC 441] held as follows:

The presumption mandated by Section 139 includes a presumption that there exists a legally enforceable debt or liability. This is of course in the nature of a rebuttable presumption and it is open to the accused to raise a

defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favour the respondent complainant"

Apex Court in T. Vasanthakumar v. Vijayakumari [(2015) 8

SCC 378] held as follows:

"Therefore, in the present case since the cheque as well as the signature has been accepted by the accused-respondent, the presumption under Section 139 would operate. Thus, the burden was on the accused to disprove the cheque or the existence of any legally recoverable debt or liability. To this effect, the accused has come up with a story that the cheque was given to the complainant long back in 1999 as a security to a loan; the loan was repaid but the complainant did not return the security cheque. According to the accused, it was that very cheque used by the complainant to implicate the accused. However, it may be noted that the cheque was dishonoured because the payment was stopped and not for any other reason. This implies that the accused had knowledge of the cheque being presented to the bank, or else how would the accused have instructed her banker to stop the payment. Thus, the story brought out by the accused is unworthy of credit, apart from being unsupported by any evidence.

Since no rebuttal evidence is available, the trial Court and the appellate Court convicted the revision petitioner. I do not find any illegality in the above findings of the courts

below. In the circumstances, conviction and sentence imposed by the trial Court is confirmed.

7. The learned counsel appearing for the revision petitioner contended that the revision petitioner is ready to pay the fine amount and seeks some more time to pay the fine amount.

In the circumstances, the revision petitioner is directed to surrender in the Chief Judicial Magistrate, Pathanamthitta, within thirty days from the date of receipt of a copy of this order to undergo the sentence, failing which the learned Magistrate shall issue non bailable warrant against the revision petitioner.

The Crl.R.P. is disposed of as above.

P.D. RAJAN, JUDGE.

acd

