

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

Crl.Rev.Pet.No. 1355 of 2008 ()

**AGAINST THE JUDGMENT IN CRL. APPEAL 636/2006 of II ADDL. SESSIONS COURT,
PALAKKAD**

AGAINST THE JUDGMENT IN C.C. 326/2004 of J.M.F.C., ALATHUR

REVISION PETITIONER(S)/APPELLANT/ACCUSED.:

**C.A.KRISHNAN, S/O. APPAI,
MANKARA HOUSE, ANAMARI, KOLLENGODE
CHITTUR TALUK, PALAKKAD DISTRICT.**

**BY ADVS.SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ**

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE.:

**1. RAVEENDRAN, S/O. APPUKUTTAN,
MUPPUPARAMBIL, KAVASSERY, ALATHUR.**

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

**R1 BY ADV. SRI.SAJAN VARGHEESE K.
R2 BY PUBLIC PROSECUTOR SRI. N. SURESH**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07-
10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.1355 of 2008

Dated this the 7th of October, 2015

ORDER

The revision petitioner, who is the appellant in Criminal Appeal 636/2006 of II Additional Sessions Judge, Palakkad challenges the judgment of conviction under Section 138 of the Negotiable Instruments Act. He was accused in C.C.326/2004 of Judicial First Class Magistrate, Alathur under Section 138 of the Negotiable Instruments Act and he was sentenced to imprisonment for 3 months and to pay compensation of Rs.25,000/- under Section 357 (3) Cr.P.C., in default of payment of compensation, simple imprisonment for three months.

2. The complainant's case in the trial court is that, on 14.10.03, accused had availed a loan of Rs.21,980/- from the complainant and in discharge of that debt, he issued Ext.P1 cheque. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. Complainant demanded the amount by issuing a notice to the accused. Even after receipt of that

notice, there was no repayment. In the circumstance, he filed the above complaint.

3. To prove the allegation, complainant examined PW1 and produced Exts.P1 to P6. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. He examined DW1 to DW3 and marked Exts.D1 to D4. The trial court convicted the accused and sentenced to imprisonment for 3 months and pay a compensation of Rs.25,000/- under Section 357 (3) Cr.P.C., in default of payment of compensation, simple imprisonment for three months. Against that he preferred an appeal, where the conviction was confirmed and sentence under Section 138 of the Negotiable Instrument Act was modified to imprisonment for 15 days and to pay compensation of Rs.25,000/-, in default of compensation, simple imprisonment for 15 days. Being aggrieved by that, accused preferred this revision.

4. The learned counsel appearing for revision petitioner submitted that he is a handicapped person and he is not challenging the concurrent findings of the court

below, but the sentence needs modification. He filed petition Crl.M.A.5542/15 and submitted that his physical condition is very weak and prayed to set aside the jail imprisonment and to convert the sentence into fine. The respondents have also no objection with regard to the above submission.

5. The revisional power to the High Court is to correct grave failure of justice arising from erroneous orders. While exercising this power, it is justified only to set right grave failure of justice and not to rectify every error. The fact that the lower court has taken a wrong view of law or misapprehended the evidence is not a reason to interfere unless it has resulted in grave miscarriage of justice. Therefore, the supervisory jurisdiction can be used to find out any illegality, irregularity in the order or sentence or proceedings of the Court below.

6. The specific case of the PW1 is 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.2 is the dishonour memo. Ext.3 is the debit advice. PW1 sent lawyer notice to the accused, Ext.P4 is the copy of the lawyer notice. Ext.P4(a) is the postal receipt. Ext.P5 is the Acknowledgment card. Ext.P6 is the reply notice. A perusal of Ext.P1 to P6 shows that when Ext.P1 was presented for encashment, it was dishonoured for the reason of funds sufficient. When cheque is dishonoured for the reason stated under Section 138 of the Negotiable Instrument Act, a presumption under Section 139 will attract in favour of the holder of the cheque. Section 139 discussed about the presumptions available in favour of the holder of the cheque. 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”.

Revision petitioner examined DW1 to DW3 and marked Exts.D1 to D4. The trial court observed that the

above rebuttal evidence is not sufficient to discard the case of PW1. A three Judge bench of the Apex Court in **Rangappa V. Sri Mohan (2010(11) SCC 441)** held as follows:-

“The presumption mandated by Section 139 includes a presumption and 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 favours the respondent complainant”.

Therefore, in the present case since the cheque as well as the signature has been accepted by the accused, the presumption under Section 139 would operate.

7. The trial court considered the evidence of DW1 to DW3 and observed that a rebuttal evidence is not sufficient and convict the accused, which was confirmed by the appellate court. I find no illegality in the concurrent findings of the courts below. The appellate court sentenced the revision petitioner to imprisonment for 15 days and to pay compensation of Rs.25,000/- to

PW1, in default, to undergo simple imprisonment for 15 days.

8. The facts and circumstances show that the cheque was issued in connection with a personal transaction. Considering the nature of offence and character of the offender and his physical condition, the sentence is to be modified. The revision petitioner is sentenced to pay a fine of Rs.30,000/-, in default of payment of fine, simple imprisonment for three months. If fine amount is realized, Rs.25,000/- shall be disbursed to the first respondent under Section 357(1) of Cr.P.C. Petitioner is directed to remit the fine amount forthwith, failing which the learned Magistrate is directed to issue Non-bailable Warrant to undergo the modified sentence. This revision petition is disposed of as above.

STK

Sd/-
P.D. RAJAN,
JUDGE

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P.A. TO JUDGE