

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

Crl.Rev.Pet.No. 1356 of 2008 ()

**AGAINST THE JUDGMENT IN CRL. APPEAL 321/2007 of
III ADDL. SESSIONS JUDGE, ERNAKULAM**

AGAINST THE ORDER IN CC 497/1999 of J.M.F.C.- II, ALUVA

REVISION PETITIONER(S)/APPELLANTS/ACCUSED:

1. S.N. WELFARE CENTRE, REG.NO.LR 708/94,
ALUVA REP.ITS PRESIDENT, V.VISWAMBARAN, AGED 56,
S/O.VELAYUDHAN, ASWATHI, PATTERRIPURAM,
ALUVA.
2. SECRETARY, M.P.SHAJI, AGED 55,
S/o.LATE PRABHAKARAN, MATTAPPILLY, ASSISI LANE,
ALUVA.

BY ADV. SRI.V.A.PRADEEPAKUMAR

RESPONDENT(S)/RESPONDENTS/COMPLAINANTS:

1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR
2. N. PRASADAN, S/O.LATE K.SEKHARAN,
RESIDING AT HOUSE NO.34/1374, VIPANCHIKA, PADIVATTOM,
SOUTH EDAPPALLY, KOCHI.

R1 BY PUBLIC PROSECUTOR SRI. N. SURESH

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 12-
10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.1356 of 2008

Dated this the 12th of October, 2015

ORDER

The Revision petitioner, who is the appellant in Crl.Appeal 321/2007 on the file of III Additional Sessions Court, Ernakulam challenges the concurrent findings of conviction under Section 138 of the Negotiable Instruments Act. He was accused in C.C.497/99 of the Judicial First Class Magistrate-II, Aluva, under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple 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 2 months. Against that he preferred appeal, in which the sentence was modified by the appellate court. Being aggrieved by that, revision petitioner approached this court with this revision Petition.

2. The complainant's case in the trial court is that, the accused are the President and Secretary of S.N. Welfare Centre and complainant deposited Rs.25,000/- in

the S.N. Welfare Centre. At the time of repayment, they issued Ext.P1 cheque. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. The complainant demanded the money by giving a notice in writing. Even after receipt of that notice, there was no repayment. In the circumstance, a complaint was filed in the Judicial First Class Magistrate-II, Aluva.

3. To prove the offence, complainant examined PW1 to PW4 and marked Exts.P1 to P8 as documentary evidence. The incriminating circumstances brought out in evidence were denied by the accused while questioning them. They examined DW1 and DW2 and marked Exts.D1 in support of his defence. The trial court convicted him.

4. The learned counsel appearing for the revision petitioner contended that there is illegality in the order passed by the trial court and appellate court. There is also a civil suit O.S.56/02 in the Munsiff's Court, Aluva in connection with the cheque amount which was, decreed for Rs.50,132/-. Hence, he prays to rectify the illegality

committed by the courts below invoking revisional jurisdiction. The learned Public Prosecutor has no objection.

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

6. The specific case of the revision petitioner 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. Exts.P2 and P3 are the dishonour memos. Ext.P4 is the copy of the lawyer notice.

Exts.P5 and P6 are returned postal covers. Ext.P7 is the copy of the reply notice. Ext.P8 is the extract of the account of the accused. A perusal of Ext.P1 to P3 shows that when Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient. The accused disputed the transaction and contended that there is no debt as alleged.

7. According to Section 138 of the Negotiable Instrument Act, when a cheque is dishonoured for the reason of funds insufficient, a presumption under Section 139 of the Negotiable Instrument Act can be drawn in favour of the holder of the cheque.

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

DW1 and DW2 were examined in the trial court to rebut the presumption. Even though, DW1 and DW2 were examined in the trial court, their evidence is not sufficient to rebut the presumption under Section 139 of the N.I. Act. Relied on the decisions in **Beena V. Muniappan (AIR 2001 SC 2995)**, **Narayana Menon V. State of Kerala 2006 (3) KLT 404 (SC)** and **Rangappa V. Sri Mohan (2010(11) SCC 441)**. The trial court convicted the accused, which was upheld by the appellate court, I find no illegality in such finding.

9. The learned counsel appearing for the revision petitioner submitted that the appellate court sentenced the accused petitioner to one month imprisonment, which is to be modified. I find some reason in the argument of the learned counsel. In the light of payment of Rs.50,000/-, he is not entitled to pay further compensation. In the circumstance, conviction under

Section 138 of the N.I. Act is confirmed. But the sentence is modified as follows;

Revision petitioners are sentenced to imprisonment for one day till rising of court and pay a fine of Rs.5000/- each in default, simple imprisonment for three months. They are directed to appear in the Judicial First Class Magistrate-II, Aluva on 1st of December 2015 to undergo the modified sentence, failing which the learned Magistrate is directed to issue non-bailable warrant. Since compensation amount is already granted, the second respondent is not entitled to get any compensation and this revision petition is disposed as above.

STK

//TRUE COPY//

P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE