

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 1390 of 2008 ()

AGAINST THE JUDGMENT IN CRL.APPEAL 441/2005 of ADDITIONAL SESSIONS
COURT (ADHOC), FAST TRACK COURT NO.1, THRISSUR DATED 27-12-2007

AGAINST THE JUDGMENT IN CC 1310/2001 of JUDICIAL FIRST CLASS
MAGISTRATE-III, THRISSUR DATED 19-05-2005

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

V.V.THOMAS, S/O. VARKEY,
VALLOPPILLY HOUSE, MULAYAM P.O., CHAVARAMPADAM
THRISSUR DISTRICT.

BY ADV. SRI.A.C.DEVY

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

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1. P.K.VISWANATHAN
PARAKKATTUVALAPPIL HOUSE, MOORKANIKKARA DESOM
KOZHUKKULLY VILLAGE, THRISSUR DISTRICT.
 2. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGHE COURT OF KERALA, ERNAKULAM, KOCHI-31.

R1 BY ADV. SRI.G.SREEKUMAR (CHELUR)
R1 BY ADV. SRI.K.R.ARUN KRISHNAN
R2 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 09-12-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.1390 of 2008

Dated this the 9th day of December, 2015

ORDER

The revision petitioner was the accused in C.C.No.1310/2001 of Judicial First Class Magistrate-III, Thrissur u/s.138 of the Negotiable Instruments Act (hereinafter referred to as the N.I. Act). The complainant's case in the trial Court was that the accused borrowed a sum of ₹37,000/- from him and in discharge of that debt, he issued Ext.P1 cheque. When Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient. Subsequently, he issued a notice demanding the amount. Even after notice, there was no repayment. Hence, the above complaint was filed in the trial Court. During trial,

the complainant was examined as PW1 and his documents were marked as Exts.P1 to P7. The accused examined DW1 to DW3. The trial Court after analysing the evidence, convicted the accused and convicted and sentenced to imprisonment for two months and to pay ₹37,000/- to the complainant as compensation u/s.357(3) Cr.P.C. with default sentence of one month. Against that, he preferred Criminal appeal No.441/2005 before Additional Sessions Judge(Adhoc), Fast Track Court No.1, Thrissur which was dismissed by the appellate Court. Being aggrieved by that, he preferred this revision petition.

2. The learned counsel appearing for the revision petitioner contended that the cheque was obtained by coercion, which was not considered by the courts below. There was no argument from the side of the 1st respondent.

3. According to Section 138 of the N.I. 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.

4. PW1 is the complainant, who 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, Ext.P3 is the notice, Ext.P4 is the postal receipt, Ext.P5 is the acknowledgment card, Ext.P6 is the reply notice and Ext.P7 is the extract of the account. On a perusal of Exts.P2 to P7, it is clear that when cheque was presented for encashment, it was dishonoured for the reason of funds insufficient. When cheque is dishonoured for the reason 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.

5. 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 Hiten P. Dalal v. Bratindranath Banerjee (AIR 2001 SC 3879] and in T. Vasanthakumar v. Vijayakumari [(2015) 8 SCC 378]. To rebut the presumption, the revision petitioner examined DW1 to DW3. The evidence of DW1 shows that he and the complainant were neighbours and he was an intermediary to the financial transactions of the complainant. The complainant used to give money for interest. Once the accused borrowed some money from the complainant to remit in the Society and he returned ₹10,000/- and for the balance amount, the complainant

visited his house and obtained Ext.P1 from DW2. But, that defence was not properly proved by him. The revision petitioner himself was examined as DW3. On an appraisal of the evidence, the trial Court found that the defence taken by the accused is only the result of an after thought and the evidence of DW1 to DW3 does not probalise the defence version and the trial Court convicted the revision petitioner, which was upheld by the appellate Court. I do not find any illegality in the sentence passed by the trial Court.

Considering the nature of transaction, the sentence imposed by the trial Court is modified to imprisonment till rising of the Court and to pay ₹37,000/-to the complainant u/s.357(3) Cr.P.C., in default of payment of compensation, simple imprisonment for three months. The revision petitioner is directed to surrender in the Judicial First

Class Magistrate-III, Thrissur to undergo the modified sentence, failing which the learned Judicial Magistrate shall issue non bailable warrant against the revision petitioner.

Crl.R.P is disposed of as above.

P.D. RAJAN, JUDGE.

acd

