

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

Crl.Rev.Pet.No. 1458 of 2008 ()

**AGAINST THE JUDGMENT IN CRA 403/2002 of ADDL. SESSIONS JUDGE (ADHOC-1)
THALASSERY**

AGAINST THE JUDGMENT IN CC 648/1998 of J.F.M.C.,TALIPARAMBA

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**SREEDHARAN.N.
S/o.KUNHAMBU,
SRESHMA,
NEAR NEDIYENGA KARALA,
NEDIYENGA P.O.,
TALIPARAMBA.**

**BY ADVS.SRI.VIJU ABRAHAM
SRI.JOY C. PAUL
SRI.DOMINIC JOHNSON
SRI.JOJO THOMAS**

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

**1. P.T.UNIKRISHNAN,
AGED 29, S/o.P.T. KUNHIRAMAN,
PANICHIKKAL HOUSE, KURUMATHOOR P.O.
KURUMATHOOR.**

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

**R1 BY ADV. SRI.V.A.SATHEESH
R2 BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN**

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

STK

P.D. RAJAN, J.

Crl.R.P.1458 of 2008

Dated this the 8th day of September, 2015

ORDER

The revision petitioner is the appellant in Crl.Appeal 403/2002 on the file of Addl. Sessions Judge, Adhoc-1, Thalassery challenges the concurrent findings of conviction under section 138 of the Negotiable Instruments Act(hereinafter referred to as 'Act'). He was accused in C.C.648/98 of Judicial First Class Magistrate, Taliparamba and sentenced to undergo simple imprisonment for 3 months under Section 138 of the N.I. Act and to pay compensation of Rs.8000/-, in default, to undergo simple imprisonment for one month.

2. The complainant's case in the trial court was that, on 13.07.97, revision petitioner borrowed a sum of Rs.25,000/- 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. The complainant demanded the money by giving a notice in

writing. There was no repayment even after that notice. In this circumstance, the above complaint was filed in the trial court.

3. To prove the offence, complainant was examined as PW1 and his documents were marked as Ext.P1 to P5. The court exhibit was marked as Ext.C1. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. He did not adduce any evidence and the Trial court convicted him. Against that, he preferred the above appeal and appellate court modified the sentence as imprisonment till rising of court and to pay compensation of Rs.30,000/- and in default, to undergo simple imprisonment for 3 months. Aggrieved by that judgment, he approached this court with this revision petition.

4. The learned counsel appearing for the revision petitioner contended that the compensation amount granted by the court below is excessive, hence he needs modification in the sentence. The Public Prosecutor has no objection in the above submission.

5. The revisional jurisdiction is supervisory jurisdiction to find out the illegality, irregularity in the order or sentence or proceedings of the Court below. The object of conferring revisional power to the High Court 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.

6. 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.

7. PW1 deposed that, Ext.P1 was issued in discharge of a debt of Rs.25,000/-, when it was presented for encashment, it was dishonoured for the reason of funds insufficient. Ext.P2 is the dishonour memo. He sent a lawyer notice demanding the amount, Ext.P3 is the copy of the lawyer notice, Ext.P4 is the postal receipt and Ext.P5 is the reply notice. The extract of the ledger was marked as Ext.C1, which shows that, when Ext.P1 was

presented for encashment, there was insufficient fund in his account to honour the cheque. When cheque is dishonoured for the reason of funds insufficient, a presumption is in favour of the holder of the cheque under Section 139 of the N.I. Act.

8. Section 139 of the Negotiable Instruments 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”.

When complainant proves the existence of a legally enforceable debt, the presumption under Section 139 of the Negotiable Instruments Act starts operating and burden shifts to the accused. The courts below considered the decisions of Apex court reported in **Hiten P. Dalal v. Bratindranath Banerjee (AIR 2001 SC 3879, Beena v. Muniappan (AIR 2001 SC 2995) and Narayana Menon v. State of Kerala 2006 (3) KLT**

404 (SC).

Therefore, such a presumption was drawn by the courts below and convicted the revision petitioner. No evidence has been adduced by the accused to rebut the presumption under Section 139 of the N.I. Act. I find no illegality in the above findings of conviction.

9. The learned counsel submitted that, the cheque amount is only Rs.25,000/- and the court below granted Rs.30,000/- as compensation. There is relevancy in the contention put forward by the learned counsel, and confirming the conviction under Section 138, I modify the sentence as follows:

The revision petitioner is sentenced to imprisonment till rising of court and pay compensation of Rs.25,000/- (Rupees Twenty five thousand only) under Section 138 of the N.I. Act, in default, simple imprisonment for one month and this revision petition is disposed as above. The revision petitioner is directed to surrender before trial court within 30 days from today to undergo the sentence, failing which, Judicial First Class Magistrate,

Taliparamba shall issue Non-bailable Warrant against the accused.

STK

Sd/-
P.D. RAJAN,
JUDGE

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P.A. TO JUDGE