

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

Crl.Rev.Pet.No. 1485 of 2008 ()

**AGAINST THE JUDGMENT IN CRL.APPEAL 220/2007 of ADDITIONAL SESSIONS
COURT (ADHOC-1), MANJERI**

AGAINST THE JUDGMENT IN ST 183/2005 of C.J.M., MANJERI

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**PARAKKAL ABU HANEEFA, AGED 45 YEARS
S/O.CHERIYA MOYEEN, PARAKKAL HOUSE,
POST KONDOTTY,
ERNAD TALUK, MALAPPURAM.**

**BY ADVS.SRI.P.VIJAYA BHANU
SRI.P.VENUGOPAL**

RESPONDENT(S):

**1. MOHAMED ASHRAF AGED 44 YEARS
S/O.MOYEEN HAJI, CHENATTUKUZHAYIL HOUSE,
PO.MONGAM,
ERANAD TALUK, MALAPPURAM**

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

R2 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14-
10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.1485 of 2008

Dated this the 14th of October, 2015

ORDER

Revision petitioner, who is the appellant in Crl. Appeal 220/07 on the file of Additional Sessions Judge, Manjeri challenges the concurrent findings of conviction under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the 'N.I. Act'). He was accused in S.T.183/2005 on the file of the Chief Judicial Magistrate, Manjeri for offence punishable under Section 138 of the Negotiable Instruments Act, he was convicted and sentenced to simple imprisonment for 4 months and to pay cost of Rs.750/-, in default, to undergo simple imprisonment for one day under Section 359 Cr.P.C.

2. The complainant's case in the trial court was that, the accused issued a Ext.P1 cheque drawn on State Bank of India, Karippur branch for Rs.1,60,000/- in discharge of a liability. When the cheque was presented for encashment through Malappuram District Co-operative

Bank, it was dishonoured for the reason of funds insufficient. The complainant demanded the due amount by giving a notice in writing to the accused, which was received by the accused and no payment thereafter. In the circumstance, a complaint was filed in the trial court.

3. During trial, complainant was examined as PW1 and his documents were marked as Exts. P1 to P4. 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 after sifting and weighing the evidence on record convicted the accused. Against that he preferred an Appeal before Sessions Court Manjeri, where the sentence was modified. Being aggrieved by that, he approached this court with this revision petition.

4. The learned counsel appearing for the revision petitioner contended that the sentence imposed by the courts below is too harsh which needs modification.

5. 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.

6. PW1 stated 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. He demanded the due amount by issuing Ext.P3 lawyer notice and Ext.P4 is the acknowledgment card. A perusal of Ext.P1 to P4 shows that cheque was dishonoured for the reason of funds insufficient. When the cheque is dishonoured for the reasons stated under Section 138 of the Negotiable Instruments Act, a presumption under Section 139 of the Negotiable Instruments Act can drawn in favour of the holder of the cheque.

7. 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”.

Therefore, it is the responsibility of the revision petitioner

to rebut the presumption under Section 139 of the N.I. Act. In the absence of any rebuttable evidence, it is presumed that cheque was issued in discharge of a debt. The trial court considered that aspect and convicted the revision petitioner, which was approved by the appellate court, I find no illegality in the findings of the courts below. Therefore, the conviction passed under Section 138 of the Negotiable Instruments Act is confirmed.

8. The revision petitioner was convicted under Section 138 of the Negotiable Instruments Act and sentenced by the trial court, which was modified by the appellate court. The appellate court sentenced the revision petitioner to undergo simple imprisonment for 2 months and pay a compensation of Rs.1,60,000/- under Section 357(3) Cr.P.C. and cost of Rs.750/-, which needs modification. In the circumstance, I modify the sentence of the revision petitioners as follows;

The revision petitioner is sentenced to imprisonment till rising of court under Section 138 of the Negotiable Instruments Act. He is also directed to pay compensation

of Rs.1,60,000/- (Rupees One lakh and sixty thousand only) under Section 357(3) Cr.P.C., in default of compensation, simple imprisonment for 2 months. The revision petitioner is directed to surrender in the trial court to undergo the modified sentence within two months from the date of this judgment, failing which, Chief Judicial Magistrate, Manjeri shall issue Non-bailable Warrant.

STK

//TRUE COPY//

P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE