

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

Crl.Rev.Pet.No. 1508 of 2008 ()

**AGAINST THE JUDGMENT IN CRA 14/2007 of ADDITIONAL SESSIONS COURT
(ADHOC)-I, MANJERI**

AGAINST THE JUDGMENT IN CC 611/2003 of J.M.F.C.,TIRUR

REVISION PETITIONER(S)/PETITIONER/APPELLANT/ACCUSED:

**MADHUSOODANAN,
S/o.KUMARAN (LATE),
PARIYAPURATH HOUSE, PACHATTIRI P.O.,
TIRUR TALUK,
MALAPPURAM DISTRICT.**

BY ADV. SRI C.M.MOHAMMED IQUABAL

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

**1. SREENIVASAN,
S/o. GOPALAN,
MECHELIL HOUSE, POST MANGATTIRI,
TIRUR, MALAPPURAM DISTRICT.**

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

R1 BY ADV. SMT. T.J.SEEMA

R2 BY PUBLIC PROSECUTOR SRI. N. SURESH

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15-
09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl. R.P. No.1508 of 2008

Dated this the 15th day of September, 2015

ORDER

Revision petitioner is the appellant in Crl.A.14/2007 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 'Act'). He was accused in C.C.611/2003 of the Judicial First Class Magistrate, Tirur and convicted and sentenced to imprisonment for 3 months and directed to pay a compensation of Rs.95,000/- under Section 357(3) Cr.P.C., in default, to undergo simple imprisonment for two months, which was confirmed by the appellate court. Being aggrieved by that, he preferred this revision petition.

2. The complainant's case in the trial court was that, accused, who is the revision petitioner in this case borrowed a sum of Rs.95,000/- from the complainant. In discharge of that liability, he issued Ext.P1 cheque drawn on Syndicate Bank, Tirur branch. When it was presented

for encashment through Danalakshmi Bank, Tirur, it was dishonoured for the reason of funds insufficient. In this circumstance, he demanded the due amount by giving a notice in writing. Even after receipt of that notice, no repayment from the side of the revision petitioner. Hence, he filed the above complaint. During trial, complainant was examined as PW1 and his documents were marked as Exts.P1 to P6. The incriminating circumstances brought out in evidence were denied by the revision petitioner while questioning him. He examined DW1 and trial court convicted him.

3. When the matter came up for hearing, the learned counsel submitted that he repaid the entire amount and matter is settled between parties and submitted to modify the sentence. The respondents have also no objection with regard to the above submission. The specific case of the first respondent in the trial court was that, Ext.P1 cheque was issued in discharge of a debt. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. Ext.P2

and Ext.P3 are the dishonour memos. He sent a lawyer notice and Ext.P4 is the copy of the lawyer notice. Ext.P5 is the postal receipt. Ext.P6 is the acknowledgement card. Ext.P2 shows that when Ext.P1 was presented for encashment, there was insufficient funds to honour the cheque. When a cheque is dishonoured for the reason stated under Section 138 of the Negotiable Instruments Act, the presumption under Section 139 of the N.I. Act is drawn in favour of the holder of the cheque.

4. 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”.

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. To rebut the presumption, DW1 was examined in the trial court. The trial court and appellate court observed that the evidence of DW1 is not sufficient to rebut the presumption under Section 139 of the N.I. Act and convicted the revision petitioner and I find no illegality in the above findings. Therefore, the conviction of the trial court under Section 138 of the Negotiable Instrument Act, which was upheld by the appellate court is confirmed. But I modify the sentence as follows:

The revision petitioner is sentenced to imprisonment till rising of court and pay compensation of Rs.95,000/- under Section 357(3) Cr.P.C. in default of payment of

compensation, simple imprisonment for 3 months. 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, Tirur shall issue Non-bailable Warrant against the accused. If the fine amount is realized, it shall be disbursed to the 1st respondent.

This revision petition is disposed as above.

STK

//TRUE COPY//

PA. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE