

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1509 of 2008 ()

**AGAINST THE JUDGMENT IN CRL.APPEAL 195/2006 of ADDL.SESIONS COURT
(ADHOC)-II, PATHANAMTHITTA**

AGAINST THE JUDGMENT IN CC 279/2003 of J.M.F.C., RANNY

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

**MADHUKUMAR,
KARIMKUTTIYIL HOUSE, KAKKUDUMON P.O.,
RANNI, PERUNADU, PATHANAMTHITTA.**

BY ADV. SRI.M.T. SURESH KUMAR

RESPONDENT(S)/RESPONDENT/RESPONDENT/COMPLAINANT:

- 1. SAM.P.CHACKO,
AMBATTU PUNNAVELIL HOUSE,
EETTICHUVADU, RANNY
PATHANAMTHITTA.**
- 2. STATE OF KERALA,
REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.**

R2 BY PUBLIC PROSECUTOR SRI. N. SURESH

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20-
11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.1509 of 2008

Dated this the 20th of November, 2015

ORDER

The revision petitioner, who is the appellant in Crl. Appeal 195/06 on the file of the Addl. Sessions Judge, Fast Track-II, Pathanamthitta challenges the concurrent conviction under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the 'N.I. Act'). He was accused in C.C.279/03 on the file of the Chief Judicial Magistrate, Palakkad and convicted for offence punishable under Section 138 of the N.I. Act and sentenced to undergo simple imprisonment for 3 months under Section 138 of N.I. Act and compensation of Rs.27,000/- under Section 357(3) Cr.P.C. Against that, he preferred the above appeal, which was dismissed by the appellate court. Being aggrieved by that, he preferred this revision petition.

2. Complainant in the trial court is the first respondent in this revision petition. The complainant's case is that, in discharge of a debt, accused issued

cheque for Rs.27,000/-. When the cheque was presented for encashment, 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 repayment 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 P6. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. He examined DW1 and DW2 as defence evidence. The trial court after sifting and weighing the evidence on record convicted the accused.

4. Heard the counsel appearing for the revision petitioner. First respondent died after filing this revision and his legal representatives were not impleaded and the notice to first respondent is dispensed with. I heard the Public Prosecutor also.

5. 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 N.I. 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 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 intimation. Ext.P4 is the lawyer notice. Ext.P5 is the postal receipt. Ext.P6 is the acknowledgment card. The evidence of PW1 shows that when Ext.P1 was presented for encashment, it was dishonoured for the reason funds insufficient. When cheque is dishonoured for the reason stated under Section 138 of the N.I. Act, a presumption under Section 139 of the N.I. Act can be 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, a presumption under Section 139 of the N.I. Act starts operating and burden shifts to 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”.

In **Narayana Menon v. State of Kerala 2006 (3) KLT 404 (SC)** it is held that, the presumption is rebuttable. Revision petitioner examined DW1 and DW2 in the trial court to rebut the presumption under Section 139 of the N.I. Act. DW1 deposed that he borrowed Rs.5000/- from the father of the first respondent and issued a blank cheque and on 10.03.2003, he returned the amount. But the father of DW1 did not return the cheque leaf. Subsequently, he informed that the cheque was lost. DW2 also supported the evidence of DW1. Even though such a contention was raised, the trial court and appellate court discarded the evidence and convicted the revision petitioner. There is no illegality in the conviction of the revision petitioner. The trial court sentenced the revision petitioner to undergo simple imprisonment for 3 months and pay compensation of Rs.27,000/- which needs modification. In **M/s.Target Overseas Exports Pvt. Ltd. V. A.M. Iqbal (2005 Cri.L.J.1931)** this Court held that, sentence to undergo imprisonment till the rising of the court and compensation under Section 357(3) Cr.P.C.

is sufficient to meet the ends of justice.

In the circumstance, revision petitioner is sentenced to imprisonment till rising of court under Section 138 of the N.I. Act and he is also sentenced to pay compensation of Rs.27,000/- under Section 357(3) Cr.P.C. The revision petitioner is directed to surrender in the Chief Judicial Magistrate, Palakkad within two months from today to undergo the modified sentence, failing which, the trial Magistrate shall issue non-bailable warrant. This revision petition is partly allowed.

STK

//TRUE COPY//

P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE