

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

Crl.Rev.Pet.No. 1551 of 2008 ()

AGAINST THE JUDGMENT IN Crl. Appeal NO.841/2005 of ADDL. SESSIONS
JUDGE, THRISSUR DATED 01-04-2008

AGAINST THE JUDGMENT IN ST 4715/2003 of J.M.F.C.-II, THRISSUR
DATED 06-10-2005

REVISION PETITIONER(S) /APPELLANT/ACCUSED:

K.REKHA, W/O.NARAYANANKUTTY,
KUNDIL HOUSE, VELUTHUR PO, THRISSUR.

BY ADVS.SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

RESPONDENT(S) /RESPONDENTS/COMPLAINANT & STATE:

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1. SURESH K.V., S/O. VELAYUDHAN,
KARIYATHVALAPPIL HOUSE, PARAKKADU VILLAGE DESOM
ARIMBUR PO, THRISSUR.
 2. THE STATE OF KERALA,
REP.BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

R1 BY ADV. SRI.VINOD J.DEV
R1 BY ADV. SRI.PRAMOD J.DEV
R2 BY PUBLIC PROSECUTOR SRI. N. SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 05-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl. R.P.No.1551 of 2008

Dated this the 5th day of October, 2015

ORDER

Revision petitioner , who is the appellant in Crl.Appeal No.841/2005 on the file of Additional Sessions Judge, (Fast Track Court No.II-Adhoc), Thrissur, challenges the concurrent finding of conviction u/s.138 of the Negotiable Instruments Act (hereinafter referred to as the N.I. Act). She was the accused in S.T.No.4715/2003 of Judicial Magistrate of First Class -II, Thrissur, she was convicted and sentenced to simple imprisonment for one day till the rising of the Court u/s.138 of N.I. Act and directed to pay ₹40,000/- to the complainant as compensation u/s.357(3) Cr.P.C.

2. The complainant's case in the trial Court was that in discharge of a debt, the accused issued a cheque for ₹40,000/-. When the cheque was presented for encashment, it was dishonoured for the reason of funds insufficient. He demanded the due amount by giving a notice in writing. Even after specific demand, there was no repayment by the revision petitioner. Hence, the above complaint.

3. During trial, the complainant was examined as PW1. His documentary evidence were marked as Exts.P1 to P6. 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 convicted the accused. Against that, he preferred the above appeal, in which the conviction was confirmed and the sentence was modified to payment of fine of

₹40,000/-, in default, simple imprisonment for two months.

Being aggrieved by that, he preferred this revision petition.

4. The learned counsel for the revision petitioner submits that Ext.P1 cheque was issued as a security, while availing a loan from the 1st respondent by a relative of the revision petitioner. But, the 1st respondent contended that the cheque was issued in discharge of a debt.

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 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 deposed that Ext.P1 was issued in discharge of a debt. When Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient. Exts.P2 and P3 are the dishonour memos. He sent a lawyer

notice. Ext.P4 is the copy of the notice. Ext.P5 is the postal receipt and Ext.P6 is the acknowledgment card. Analysing the evidence of PW1 and Exts.P1 to P6, it is clear that the cheque was dishonoured for the reason of funds insufficient. When the cheque is dishonoured for the reasons stated u/s.138 of the N.I. Act, a presumption can be drawn in favour of the holder of the cheque u/s.139 of the N.I. Act.

7. 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. 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".

PW1 deposed that the revision petitioner admitted his signature in Ext.P1. Thus, the burden was on the revision petitioner to rebut the presumption of the existence of any legally recoverable debt or liability. For rebutting the presumption, no evidence has been adduced by the revision petitioner. The principle drawing presumptions has been explained by the Apex Court in Beena v. Muniappan (AIR 2001 SC 2995). The trial Court and the appellate Court appreciated the legal position and concluded that Ext.P1 was issued in discharge of a debt. I do not find any illegality in the above judgment.

8. While confirming the conviction u/s.138 of the N.I. Act, the appellate Court modified the sentence to payment of fine of ₹40,000/-, in default of payment of fine, simple imprisonment for two months. Considering the nature of offence, I modify the sentence passed by

the appellate Court as follows:

The revision petitioner is sentenced to imprisonment till rising of the Court u/s.138 of the N.I. Act and to pay compensation of ₹40,000/- u/s.357(3) Cr.P.C. , in default of payment of compensation, simple imprisonment for two months. If the compensation amount is realised, it shall be disbursed to the 1st respondent forthwith. The revision petitioner is directed to surrender forthwith in the Judicial Magistrate of I Class - II, Thrissur to undergo the modified sentence.

This revision petition is disposed of as above.

P.D. RAJAN, JUDGE.

acd

