

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

Crl.Rev.Pet.No. 2720 of 2010 ()

**AGAINST THE JUDGMENT IN CRL.APPEAL 175/2006 of ADDITIONAL SESSIONS
COURT(ADHOC-III), KOLLAM**

AGAINST THE JUDGMENT IN CC 833/2004 of J.M.F.C.-III, PUNALUR

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**RADHAKRISHNAN, S/O.KUNJAN PILLAI,
MATTAKKARA VEEDU, SIVAJI NAGAR, KALLAYAM P.O.,
THIRUVANANTHAPURAM-43.**

BY ADV. SRI.T.R.RAJAN

RESPONDENT(S)/COMPLAINANT:

- 1. M.S.SURESH, S/O.MADHAVAN PILLAI,
M.S.ESTATE, VILAKUDI VILLAGE.**
- 2. STATE OF KERALA REPRESENTED
BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.**

**R1 BY ADV. SRI.C. RAJENDRAN
R2 BY PUBLIC PROSECUTOR SRI. N. SURESH**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 02-
11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.2720 of 2010

Dated this the 2nd of November, 2015

ORDER

The revision petitioner, who is the appellant in Crl. Appeal 175/2006 on the file of the Addl. Sessions Judge, Adhoc-III, Kollam 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 C.C.833/04 on the file of the Judicial First Class Magistrate-III, Punalur and convicted for offence punishable under Section 138 of the N.I. Act and sentenced to undergo simple imprisonment for 4 days under Section 138 of N.I. Act and pay an amount of Rs.1,80,000/- to the complainant as fine u/s.357(3) Cr.P.C., in default, to undergo simple imprisonment for two months. Against that, he preferred an appeal, in which the sentence was modified. 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 of Rs.1,80,000/-, accused issued Ext.P1 cheque. 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 Ext.P1 to P8. 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.

4. The learned counsel appearing for the revision petitioner contended that, there is no proof with regard to the actual debt amount. When there is no evidence with

regard to debt or liability, no offence under Section 138 of the N.I. Act will attract in such cases. Hence the illegality committed by the trial court is to be rectified by invoking revisional jurisdiction.

5. The learned counsel appearing for the first respondent contended that no reasons are stated by the revision petitioner to interfere in the concurrent findings of the courts below. The oral evidence of PW1 and documentary evidence of Ext.P1 to P8 are not sufficient to prove the offence and he prays to dismiss the revision petition.

6. The revision petitioner was convicted by the trial court, which was upheld by the appellate court. The first respondent's case is that, in discharge of a debt, revision petitioner issued Ext.P1 cheque and it was dishonoured for the reason of funds insufficient. Ext.P2 is the dishonour memo. Ext.P3 is the intimation. He demanded the due amount by giving a notice in writing. Ext.P4 is the copy of the notice. Ext.P5 is the postal receipt, Ext.P6 is the

acknowledgment card. Ext.P7 is the chitty pass book. Ext.P8 is the chitty receipt. On a perusal of oral evidence of PW1 and Exts.P1 and P2, it is clear that, the cheque was dishonoured for the reason of 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 the accused. Section 139 of the N.I. 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”.

In **Narayana Menon v. State of Kerala 2006 (3) KLT 404 (SC)** it is held that, presumption is rebuttable. Even though, PW1 stated that there is a liability of Rs.1,80,000/-, he says only about the liability of Rs.1,25,000/-. Therefore, in the absence of rebuttable evidence trial court convicted the revision petitioner and sentenced him. The appellate court modified the sentence. I find no illegality in the conviction passed by the trial court. The appellate court sentenced the revision petitioner to imprisonment till rising of court and pay compensation of Rs.1,80,000/- to the complainant u/s.357(3) Cr.P.C., in default, to undergo simple imprisonment for two months. PW1 in his cross examination stated that the liability of Rs.1,25,000/- is with regard to a chitty transaction. It is clear from the oral evidence of PW1 that there were several transactions between the revision petitioner and the first respondent. A civil suit is also filed by the revision petitioner against

first respondent. In the absence of any rebuttal evidence, I find no illegality in the findings recorded by the appellate court. The reasons stated by the petitioner in Crl.M.A.8627/2010 is not sufficient. Hence, Crl.M.A.8627/2010 is dismissed.

While cross examination of PW1 he admitted that he took yield for 10 days, but revision petitioner put a suggestive question that he took yield for 27 days. In O.S.377/3 the learned counsel appearing for the revision petitioner submits, altogether there was 400 yielding rubber trees. If that be the position, the yield for one month at the rate of Rs.48.00 per kg. will come to Rs.22,400/-. Hence, I take it as rounded to Rs.25,000/- In the circumstance, the revision petitioner is bound to pay the balance amount. The revision petitioner is sentenced to imprisonment till rising of court and pay compensation of Rs.1,55,000/-. He has already deposited Rs.50,000/- in the trial court, which can be adjusted towards the compensation amount. The revision petitioner is directed

to surrender in the trial court and pay the balance amount within one month from the date of receipt of a copy of this order, failing which the trial Magistrate shall issue non-bailable warrant.

STK

//TRUE COPY//

PA. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE