

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

Crl.Rev.Pet.No. 3182 of 2008 ()

AGAINST THE JUDGMENT IN Crl.APPEAL 119/2007 of II ADDL SESSIONS
COURT, KOZHIKODE DATED 10.07.2008

AGAINST THE JUDGMENT IN ST 2939/2004 of J.M.F.C.-V, KOZHIKODE
DATED 27.01.2007

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

KALLUDUMBAN LATHEEF, S/O.KUNHALI,
AGED 36 YEARS, EAST OF VALLIKKUNNU RAILWAY STATION
ARIYALLUR P.O., MALAPPURAM DISTRICT.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENT(S)/COMPLAINANT AND STATE::

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1. A.P.BABU, S/O.KANDAKUTTY,
AGED 47 YEARS, AMBALIPARAMBIL HOUSE, KADALUNDI
KOZHIKODE DISTRICT.
 2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI. N. SURESH

R1 BY ADV. SRI.P.SANJAY

R1 BY ADV. SRI.M.MUHAMMED SHAFI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 07-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.3182 of 2008

Dated this the 7th day of October, 2015

ORDER

Revision petitioner, who is the appellant in Crl.Appeal No.119/2007 on the file of II Additional Sessions Judge, Kozhikode, challenges the concurrent finding of conviction u/s.138 of the Negotiable Instruments Act (hereinafter referred to as the N.I. Act). He was the accused in S.T.No.2939/2004 of Judicial First Class Magistrate-V, Kozhikode, he was convicted and sentenced to simple imprisonment for two months and to pay compensation of ₹1,00,000/- to PW1 u/s. 357 (3) Cr.P.C., in default simple imprisonment for one month u/s.138 of the N.I. Act.

2. The complainant's case in the trial Court was that in discharge of a liability, the accused issued Ext.P1 cheque

for ₹1 lakh drawn on Malappuram District Co-operative Bank Ltd, Parappanangadi branch. When it was presented for encashment through Canara Bank, Kadalundi branch, it was dishonoured for the reason of funds insufficient. The complainant demanded the due amount by giving a notice in writing. Even after receipt of notice, there was no repayment. In the circumstances, a complaint was filed in the trial Court.

3. During trial, the complainant was examined as PW1 and his documents were marked as Exts.P1 to P7. 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 him. Against that, he preferred an appeal, in which the sentence was modified as simple imprisonment till rising of the Court and directed to pay compensation of ₹1 lakh, in

default of payment of compensation, simple imprisonment for two months. Being aggrieved by that, the accused preferred this revision.

4. The learned counsel appearing for the revision petitioner contended that the 1st respondent/complainant failed to show the source of income to prove the alleged offence and he has no capacity to raise an amount of ₹1 lakh, which alleged to have given to the revision petitioner. He further contended that the 1st respondent might have taken Ext.P1 cheque from the house of the revision petitioner without his knowledge and foisted a false case. Hence, the conviction and sentence passed by the trial court is to be set aside. The learned counsel relied the decision in Subramani K. v. K. Damodara Naidu [2014 (4) KHC 533]

5. As per the order passed by this Court on

15.9.2015, it is reported that the 1st respondent expired on 3.6.2013 at TMH Hospital Kotakadavu, Kozhikode and Sub Inspector of Police, Feroke, Kozhikode City produced the Death Certificate obtained from Kadalundi Grama Panchayat, which is marked as Ext.C1. Ext. C1 shows that the death was registered on 13.6.2013. The legal heirs of the 1st respondent are not impleaded in this petition. Hence, I heard the learned Public Prosecutor.

6. The concurrent finding of the Court below is under challenge. The specific case of the complainant in the trial Court was that the accused in discharge of a liability, issued Ext.P1 cheque and it was dishonoured for the reason of funds insufficient. Ext.P2 is the dishonour memo. Ext.P3 is another memo issued from the Canara Bank. Ext.P2 shows that the cheque was dishonoured for the reason of funds insufficient. After getting the

dishonour memo, PW1 demanded the amount by giving a notice in writing. Ext.P4 is the copy of the lawyer notice. Ext.P4(a) is the postal receipt. Ext.P5 is the acknowledgment card. Ext.P6 is the account book and Ext.P7 is attendance . A perusal of Exts.P1 to P7 shows that when Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient. When a cheque is dishonoured for the reasons stated u/s.138 of the N.I. Act, a presumption u/s.139 can be drawn in favour of the holder of the cheque.

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".

It is the responsibility of the revision petitioner to rebut the presumption u/s.139 of the N.I. Act. Even though he contended that no source of income has been shown by the complainant to prove the alleged offence, no rebuttal evidence has been adduced by the revision petitioner to substantiate that contention. The next contention was that Ext.P1 was stolen from the house of the revision petitioner, misappropriated that cheque and foisted a false case. Even though such contentions were raised by the revision petitioner in the trial Court, in the absence of any rebuttal evidence, that contention was rejected. The trial Court analysed the oral and documentary evidence and convicted the accused, which was upheld by the appellate Court. I do not find any illegality in the above conviction.

Therefore, there is no merit in this revision petition and it is dismissed accordingly. The revision petitioner is directed to surrender in the Judicial First Class Magistrate-V, Kozhikode on 7.11.2015, failing which the learned Magistrate shall issue non bailable warrant against the revision petitioner.

P.D. RAJAN, JUDGE.

acd

