IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

Crl.Rev.Pet.No. 3484 of 2008 ( )

AGAINST THE JUDGMENT IN Crl.APPEAL 727/2007 of SESSIONS COURT,THIRUVANANTHAPURAM DATED 14.7.2008
AGAINST THE JUDGMENT IN S.T.C.NO.55/2005 OF JUDICIAL FIRST CLASS MAGISTRATE-IV, NEDUMANGADU DATED 14.8.2007.

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

SUNILKUMAR, S/O. SADASIVAN,
LALI BHAVAN, ISRO JUNCTION, CHULLIMANOOR.P.O
NEDUMANGADU.

BY ADV. SRI.G.SUDHEER

RESPONDENT(S)/COMPLAINANT AND STATE:

1. SUDHAKARAN NAIR,
   BINI HOUSE, KUPPAKONAM, NEDUMANGADU
   THIRUVANANTHAPURAM.

2. STATE OF KERALA, REPRESENTED BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R, BY PUBLIC PROSECUTOR SRI. N. SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No. 3484 of 2008

Dated this the 4th day of November, 2015

ORDER

Revision petitioner, who is the appellant in Crl.Appeal No.727/2007 on the file of Sessions Judge, Thiruvananthapuram, challenges the concurrent 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.55/2005 u/s.138 of the N.I. Act and sentenced to undergo simple imprisonment for seven months and compensation of ₹91,000/- u/s.357 (3) Cr.P.C. Against that, he preferred the above appeal, which was modified by the appellate Court. Being aggrieved by that, he preferred this revision petition.

2. The complainant in the trial Court is the 1st respondent in this revision petition. The complainant's case in the trial Court is that in discharge of a debt, the accused issued a cheque for ₹91,000/- drawn on Nedumangad Service Co-operative Bank Ltd No.448. When the cheque was presented for encashment, it was dishonoured for the reason of funds insufficient. The complainant had issued a notice to the accused. Without accepting the notice, it was returned to the sender and he did not pay the due amount. In the circumstances, he filed a complaint in the trial Court.

3. During trial, the complainant was examined as PW1. 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 did not adduce any defence evidence. The trial Court convicted him.

4. Heard both sides. 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.

5. To prove the offence, the complainant was examined as PW1. His evidence shows that the revision petitioner issued Ext.P1 cheque to him. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. Ext.P3 is the dishonour memo and Ext.P2 is the cheque returned remittance memo. PW1 gave a statutory notice. Ext.P4 is the copy of the notice. Ext.P5 is the postal receipt and Ext.P6 is the return notice. When cheque is dishonoured for the reason stated u/s.138 of the N.I. Act, a presumption u/s.139 of the N.I. Act can be drawn in favour of the holder of the cheque. 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.

6. 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".

The principle drawing presumptions has been explained by the Apex Court in **Beena** v. **Muniappan** (AIR 2001 SC 2995). Apex Court in **T. Vasanthakumar** v. **Vijayakumari** [(2015) 8 SCC 378] held as follows:

> "Therefore, in the present case since the cheque as well as the signature has been accepted by the accused-respondent, the presumption under Section 139 would operate. Thus, the burden was on the accused to disprove the cheque or the existence of any legally recoverable debt or liability. To this effect, the accused has come up with a story that the cheque was

> given to the complainant long back in 1999 as a security to a loan; the loan was repaid but the complainant did not return the security cheque. According to the accused, it was that very cheque used by the complainant to implicate the accused. However, it may be noted that the cheque was dishonoured because the payment was stopped and not for any other reason. This implies that the accused had knowledge of the cheque being presented to the bank, or else how would the accused have instructed her banker to stop the payment. Thus, the story brought out by the accused is unworthy of credit, apart from being unsupported by any evidence.

No rebuttal evidence has been adduced in the trial Court and the trial Court convicted the accused, which was confirmed by the appellate Court. The appellate Court modified the sentence to simple imprisonment till rising of the Court and to pay a fine of ₹91,000/-, in default simple imprisonment for four months. I do not find any illegality in the judgment of the appellate Court. Hence, 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-IV, Nedumangad forthwith to undergo the modified sentence, failing which the learned Judicial Magistrate shall issue non bailable warrant against the revision petitioner.

P.D. RAJAN, JUDGE.

acd