

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

Crl.Rev.Pet.No. 3702 of 2008 ()

**AGAINST THE JUDGMENT IN CRL.APPEAL 712/2007 of ADDITIONAL SESSIONS
COURT (ADHOC-1), ERNAKULAM**

AGAINST THE JUDGMENT IN CC 1662/2002 of J.M.F.C.-II, ERNAKULAM

REVISION PETITIONER(S):

**MANOJ KUMAR T.P., SANTHA NIVAS,
THAIVELIL THUNDYIL , NEAR LISSIE HOSPITAL,
KOCHI -18.**

BY ADV. SRI.T.N.HAREENDRAN

RESPONDENT(S):

**1. M/S WHEELS AUTO FINANCE,
PENTA TOWERS, KALOOR, KOCHI -17
REPRESENTED, BY SABU V.A., S/O. ANTONY VADASSERY HOUSE,
ELOOR NORTH, UDYOGAMANDAL.**

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

R2 BY PUBLIC PROSECUTOR SRI. N. SURESH

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27-
10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.3702 of 2008

Dated this the 27th of October, 2015

ORDER

The revision petitioner, who is the complainant in Crl. Appeal 712/07 on the file of the Addl. Sessions Judge (Adhoc-1), Ernakulam 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.1662/2002 on the file of the Judicial First Class Magistrate-II, Ernakulam and convicted for offence punishable under Section 138 of the Negotiable Instruments Act and sentenced to simple imprisonment for 3 months and compensation of Rs.70,000/- under Section 357(3) Cr.P.C, in default simple imprisonment for two weeks. Against that he preferred the above appeal, in which the conviction was confirmed and modified the sentence. Being aggrieved by that he preferred this revision petition. The first respondent is the complainant in the trial court.

2. The complainant's case in the trial court is that, in discharge of a debt, 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 marked Exts. P1 to P6 as documentary evidence. 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 was no financial transaction with the first respondent. No evidence has been adduced by the first respondent to show that he issued Ext.P1 cheque in discharge of a debt. Ext.P6 is not

a reliable document to prove the alleged transaction. In this circumstance, the illegality committed by the trial courts below is to be rectified invoking revisional jurisdiction.

5. Notice served to the first respondent through Asst. Commissioner of Police Ernakulam and there was no response. I heard the Public Prosecutor. The specific case of the first respondent in the trial court was that in discharge of a debt, revision petitioner issued Ext.P1 cheque for Rs.50,417/- drawn on Vysya Bank Ltd., Ravipuram branch. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. Ext.P2 is the dishonour memo issued from Catholic Syrian Bank, Thrissur. First respondent gave a lawyer notice. Ext.P3 is the lawyer notice. Ext.P4 is the acknowledgment card. Ext.P5 is the copy of letter of authorisation. As per Ext.P5, PW1 is authorized to represent the first respondent. Ext.P3 is the copy of lawyer notice. Ext.P6 is the extract of the ledger of the first respondent's hire purchase business. A perusal of

Ext.P1 and P2 shows that when Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient. When cheque is dishonoured for the reasons stated under Section 138 of the Negotiable Instruments Act, a presumption under Section 139 of the Negotiable Instruments Act can be drawn in favour of the holder of the cheque.

6. When complainant proves that the cheque was received for the reasons stated under Section 138 of the N.I. Act, 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”.

The courts below considered the decisions of Apex court reported in **Hiten P. Dalal v. Bratindranath Banerjee (AIR 2001 SC 3879, Beena v. Muniappan (AIR 2001 SC 2995) and Narayana Menon v. State of Kerala**

2006 (3) KLT 404 (SC).

7. The learned counsel appearing for the revision petitioner contended that there was no debt or liability with regard to first respondent. Ext.P6 is not sufficient to prove the liability. Even though, such a contention was raised, PW1 categorically stated that there was hire purchase transaction with the revision petitioner. As per Ext.P1, there was hire purchase transaction with the revision petitioner. But there is difference in the amount shown in Ext.P6. While cross-examination of PW1, revision petitioner raised certain doubt with regard to the transaction with Income tax Department and other Government institutions, that itself will not help the revision petitioner to rebut the presumption under Section 139 of the N. I. Act. The trial court considered the above aspect and convicted the accused, which was upheld by the appellate court and modified the sentence. I find no illegality in the sentence. The default clause was not included while sentencing the accused. I do not find any reason to interfere in the findings and

there is no merit in this revision petition and it is dismissed accordingly.

STK

//TRUE COPY//

PA. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE