

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE P.D.RAJAN**

**TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937**

**Crl.Rev.Pet.No. 4215 of 2008 ( )**  
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**AGAINST THE JUDGMENT IN CRL. APPEAL 400/2006 of ADDL. SESSIONS JUDGE-II,  
MAVELIKKARA**

**AGAINST THE JUDGMENT IN CC 112/2005 of J.M.F.C., KAYAMKULAM**  
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**REVISION PETITIONER(S):**  
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**DAYAKUMAR, S/O BALAN,  
AGED 46 YEARS, KALEECKAL VEEDU, ERAMATHUR,  
THRIPPERUNTHURA VILLAGE, MANNAR.**

**BY ADVS.SRI.R.SUNIL KUMAR  
SMT.A.SALINI LAL**

**RESPONDENT(S)/RESPONDENT:**  
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- 1. STATE OF KERALA, REPRESENTED BY  
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**
- 2. JAYASREE SURESH, W/O SURESH,  
AGED 39 YEARS, PARACKAL VEEDU, KANNAMPALLY BHAGAM  
KAYAMKULAM.**

**R1 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08-  
12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**STK**

**P.D. RAJAN, J.**

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**Crl.R.P.4215 of 2008**  
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**Dated this the 8<sup>th</sup> of December, 2015**

**ORDER**

The revision petitioner, who is the accused in C.C.112/05 on the file of the Judicial First Class Magistrate, Kayamkulam, convicted for offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the 'N.I. Act') and he was sentenced to undergo simple imprisonment for one year and compensation of Rupees One lakh under Section 357(3) Cr.P.C. Against that, he preferred Crl. Appeal 400/06, where the Additional Sessions Judge-II, Mavelikkara dismissed the appeal. Being aggrieved by that, he preferred this revision petition.

2. Complainant's case in the trial court is that, accused borrowed a sum of Rupees one lakh from her and in discharge of that debt, accused issued cheque for Rupees One lakh. 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, there was no repayment thereafter. In the circumstance, a complaint was filed in the trial court.

3. Heard the learned counsel appearing for the revision petitioner and the Public Prosecutor also.

4. 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 N.I. 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 case, complainant was examined as PW1 and her documents were marked as Exts.P1 to P6. Her evidence shows that, Ext.P1 was issued in discharge of a debt. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. Ext.P2 is the cheque return memo, Ext.P3 is the dishonour memo, Ext.P4 is the copy of the lawyer notice, Ext.P5 is the postal receipt and Ext.P6 is the acknowledgment card. A perusal of Ext.P3, it is clear that when Ext.P1 was presented for encashment, it 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.

6. 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 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”.

In **Hiten P. Dalal v. Bratindranath Banerjee (AIR 2001 SC 3879)** and **Narayana Menon v. State of Kerala (2006 (3) KLT 404 (SC))** it is held that, the presumption is rebuttable. Revision petitioner did not adduce any defence evidence to rebut the presumption under Section 139 of the N.I. Act. The trial court convicted the accused, which was upheld by the appellate court. Analysing the facts and circumstances in this case, it is clear that conviction passed by the trial court under section 138 of the N.I. Act is to be confirmed. The trial court

sentenced the revision petitioner to undergo simple imprisonment for one year under Section 138 of the N.I. Act and to pay compensation of Rupees one lakh under Section under Section 357(3) Cr.P.C.

The learned counsel appearing for the revision petitioner submitted that the sentence imposed by the courts below is too harsh and which needs modification.

**In M/s.Target Overseas Exports Pvt. Ltd. V. A.M. Iqbal (2005 Crl.L.J.1931)** this Court held that, sentence to undergo imprisonment till the rising of the court and compensation under Section 357(3) Cr.P.C. is sufficient to meet the ends of justice. In the circumstance, revision petitioner is sentenced to imprisonment till rising of court under Section 138 of the N.I. Act and he is also sentenced to pay compensation of Rupees One lakh under Section 357(3) Cr.P.C, in default simple imprisonment for 3 months. The revision petitioner is directed to surrender in the Judicial First Class Magistrate, Kayamkulam, within one month from today to undergo the modified sentence, failing which, the trial Magistrate shall issue non-bailable

warrant. This revision petition is partly allowed.

STK

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P.A. TO JUDGE

Sd/-  
**P.D. RAJAN,**  
**JUDGE**