

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

Crl.Rev.Pet.No. 4233 of 2008 ()

**AGAINST THE JUDGMENT IN CRL.APPEAL 392/2007 of ADDL. SESSIONS COURT
(ADHOC)-II, MANJERI**

AGAINST THE JUDGMENT IN CC 447/2005 of J.F.C.M..-II,PERINTHALMANNA

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**ABDUTTY MARAKKADAVATH,
MARAKADAVATH HOUSE, NEAR KSRTC, PONNANI,
CORRESPONDENT SOORYA T V, MALAPPURAM DISTRICT.**

BY ADV. SRI.DILIP MOHAN

RESPONDENT(S)/COMPLAINANT/STATE:

**1. STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.**

**2. SANTAKUMARI, W/O.T.C.SREEDHARAN,
AKAYIL HOUSE, PUZHAKKATIRI P.O., MALAPPURAM.**

R2 BY PUBLIC PROSECUTOR SRI. N. SURESH

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05-
10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.4233 of 2008

Dated this the 5th of October, 2015

ORDER

This revision petition is preferred against the Judgment in Criminal Appeal 392/2007 on the file of Sessions Judge, (Adhoc-II), Manjeri challenges the concurrent findings of conviction under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'Act'). He was accused in C.C.447/2005 and convicted under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment for 3 months and to pay compensation of Rs.62,000/- under Section 357(3) Cr.P.C., in default of payment of compensation, simple imprisonment for two months.

2. The complainant's case in the trial court was that the accused borrowed a sum of Rs.62,000/- from her and in discharge of that debt, he issued Ext.P1 cheque drawn on HDFC Bank Ltd., Medical College, Trivandrum branch. When it was presented for encashment through Federal Bank, Angadippuram branch, it was dishonoured for the

reason of account closed. The complainant demanded the amount by issuing a lawyer notice. Even after receipt of that notice, there was no repayment. In the circumstance, the complaint was filed in the trial court.

3. During trial, complainant was examined as PW1 and her documents were marked as Exts.P1 to P5. 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 Crl. Appeal 392/2007 in which the conviction under Section 138 of the N.I. Act was confirmed. The accused was sentenced to imprisonment till rising of court and pay a sum of Rs.62,000/- as compensation, in default of payment of compensation, imprisonment for two months. Being aggrieved by that, he preferred this revision petition.

4. The revisional jurisdiction is supervisory jurisdiction to find out the illegality, irregularity in the order or sentence or proceedings of the Court below. The object of conferring revisional power to the High Court to

correct grave miscarriage or failure of justice arising from erroneous or defective orders. While exercising this power, it is justified only to correct grave failure of justice and not to rectify every error. The fact that the lower court has taken a wrong view of law cannot be a reason to interfere unless it has resulted in grave miscarriage of justice.

5. For ascertaining the illegality, I have perused the oral and documentary evidence. PW1 is the defacto complainant. Her evidence shows that, when Ext.P1 was presented for encashment, it was dishonoured for the reason of funds insufficient. Exts.P2 and P3 are the dishonour memos. Ext.P4 is the copy of the lawyer notice. Ext.P5 is the acknowledgment card. It is clear from the oral evidence of PW1 that, the statutory formalities as stated under Section 138 of the N.I. Act have been properly complied by the first respondent, defacto complainant. When the cheque is dishonoured for the reason stated under Section 138 of the N.I. Act, a presumption under Section 139 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 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”.

A three Judge bench of the Apex Court in **Rangappa V. Sri Mohan (2010(11) SCC 441)** held as follows:-

“The presumption mandated by Section 139 includes a presumption and there exists a legally enforceable debt or liability. This is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the respondent complainant”.

The revision petitioner admitted his signature in the Ext.P1. Therefore, the trial court and appellate court drawn a presumption in favour of the holder of the cheque, I find no illegality in the judgment of the lower courts. The appellate court sentenced the revision petitioner for imprisonment till rising of the court under Section 138 of the Negotiable Instruments Act and pay compensation of Rs.62,000/- under Section 357(3) Cr.P.C., in default of payment of compensation, simple imprisonment for 2 months, it was also directed that, if compensation is realized, it shall be disposed of to the first respondent. I find no illegality in the findings of the court below and there is no merit in this revision petition and it is dismissed accordingly.

STK

//TRUE COPY//

P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE