

(2024) 12 KL CK 0127

In the High Court Of Kerala

Case No : Criminal Revision Petition No. 1437 Of 2024

Asharaf M.K

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 20-12-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 357(3)
Negotiable Instruments Act, 1881 — Section 118, 138, 139

Citation : (2024) 12 KL CK 0127

Hon'ble Judges : Dr.Kauser Edappagath, J

Bench : Single Bench

Advocate : Latheesh Sebastian, Seetha S

Final Decision : Dismissed

Judgement

Dr.Kauser Edappagath, J

1. The petitioner challenges the concurrent finding of conviction and sentence in a proceedings under Section 138 of the Negotiable Instruments Act (for short 'the NI Act').
2. The 1st respondent filed a private complaint against the petitioner under Section 138 of the NI Act. The case of the complainant/1st respondent is that the accused/petitioner borrowed a sum of ₹ 85,000/- from him and towards the discharge of the said debt, Ext.P1 cheque was issued, which on presentation was dishonoured with endorsement 'refer to drawer'. Though statutory notice issued by the complainant to the accused was received by him, there was no compliance. Hence, the prosecution was lodged.
3. Before the trial court, the complainant gave evidence as PW1 and Exts. P1 to P6 were marked. The trial court after evaluating the evidence found the accused guilty under Section 138 of the NI Act and he was convicted for the said offence. He was sentenced to undergo simple imprisonment till rising of court and to pay a fine of ₹ 85,000/-, in default to suffer simple imprisonment for a period of two

months. The fine amount, if realised was ordered to be paid to the complainant under Section 357(3) of Cr.P.C. The appeal preferred by the accused before the Sessions Court, Thodupuzha (for short 'the appellate court') was dismissed. The accused challenges the conviction and sentence of the trial court as well as the appellate court.

4. I have heard the learned counsel for the petitioner.

5. As stated already, the case of the complainant is that the accused borrowed a sum of ₹ 85,000/- and towards the discharge of the said debt, Ext.P1 cheque was issued. The complainant deposed in tune with the averments in the complaint. The accused took up a contention that the complainant was using his JCB on rent basis and he issued cheque to the complainant for purchase of spare parts of JCB, which he misused and a false complaint was filed. The evidence given by PW1 proves the transaction, execution and issuance of the cheque. The accused was not able to probabalise the defence taken by him that the cheque in question was issued towards the purchase of spare parts. In short, no rebuttal evidence has been adduced by the accused for the rebuttal evidence available to the complainant under Sections 139 and 118 of the NI Act. Hence, I see no reason to interfere with the conviction and sentence passed by the trial court and confirmed by the appellate court. Accordingly, the revision petition is dismissed.

However, the petitioner/accused is granted six months' time to surrender before the trial court and suffer imprisonment till rising of court and to pay the fine amount.