

(2024) 12 KL CK 0130

In the High Court Of Kerala

Case No : Criminal Revision Petition No. 1438 Of 2024

M.S. Sulochana

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 20-12-2024

Acts Referred:

Negotiable Instruments Act, 1881 — Section 118, 138, 138(b), 139

Citation : (2024) 12 KL CK 0130

Hon'ble Judges : Dr.Kauser Edappagath, J

Bench : Single Bench

Advocate : K.Anand, N.Rajesh, Benny Antony Parel, Ameer Salim, Nandhana T.B., M.P. Prasanth

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 2nd respondent filed a private complaint against the petitioner under Section 138 of the NI Act. The case of the complainant/2nd respondent is that the accused/petitioner has borrowed a sum of ₹ 30,000/- to meet her important financial needs and towards the discharge of the said liability, the petitioner has issued Ext.P1 cheque. On presentation, the cheque was dishonoured for want of sufficient funds. Though statutory notice was issued to the accused, it was returned unclaimed. Therefore, the prosecution was lodged under Section 138 of the NI Act.
3. Before the trial court, the complainant gave evidence as PW1. Exts. P1 to P5 were marked. After trial, the trial court found the accused guilty under Section 138 of the NI Act and convicted her for the said offence. She was sentenced to pay a fine of ₹ 60,000/-, in default to suffer simple imprisonment for one month.

The appeal preferred by the accused/revision petitioner before the Sessions Court, Palakkad (for short 'the appellate court') was dismissed. The accused challenges the conviction and sentence passed by the trial court as well as the appellate court in this revision petition.

4. I have heard Sri. K. Anand, the learned counsel for the revision petitioner.

5. The learned counsel for the petitioner submitted that the complainant has failed to establish his financial capacity and also his source of income. The learned counsel also submits that the complainant has failed to prove the execution of cheque.

6. The complainant gave evidence as PW1. He deposed in tune with the averments in the complaint. The evidence given by PW1 that he and the accused were friends, the accused borrowed a sum of ₹ 30,000/- from him and towards the discharge of the said debt, Ext.P1 cheque was issued was not seriously challenged in the cross examination. Apart from the bare denial of the transaction, the accused has not set apart any defence to suggest under what circumstances the cheque signed by her happened to be in the hands of the complainant. The evidence of PW1 proves the transaction and execution of cheque. No rebuttal evidence has been adduced by the accused to rebut the presumption available to the complainant under Sections 139 and 118 of the NI Act. The statutory notice issued by the complainant under Section 138(b) of the NI Act was returned for the reason that the accused has unclaimed it. Therefore, there is constructive service of notice. I find no illegality or impropriety in the impugned judgments.

Accordingly, this revision petition is dismissed. However, the petitioner/accused is granted six months' time to deposit the fine amount at the trial court.