**Supreme Court**

**Rev. Mother Marykutty Vs. Reni C. Kottaram & another**

**[Criminal Appeal No.1594 of 2012]**

**Decided on: October 12, 2012**

**Fakkir Mohamed Ibrahim Kalifulla, J.**

The appellant/accused is aggrieved by the judgment dated17.03.2010 passed in Criminal Appeal No.1707/2007 of the High Court of Kerala at Ernakulam. The respondent herein preferred a complaint against the appellant under Section 142 of the Negotiable Instruments Act (hereinafter called 'the Act') for an offence punishable under Section 138 of the Act.

**FACTS:**

The appellant/accused entrusted the work of construction of an Old Age Home and a Chapel at Punnaveli, Pathanamthitta District based on an agreement between the appellant and the respondent. According to the respondent, the appellant issued a post dated cheque for Rs.25 lakhs in favour of the respondent towards the outstanding amount due to him for the work done by him. The cheque was dated 21.03.2005. It was claimed that when the cheque was presented by the respondent with his bankers, the same was dishonoured due to insufficiency of funds in the account of the appellant.

It was further claimed that though the respondent intimated about the dishonour of the cheque by a lawyer's notice dated 30.03.2005 served on the appellant on31.03.2005, she came forward with a reply taking the stand that no amount was due and that the respondent stealthily removed two cheques from the custody of the appellant of which the present one was forged and presented for clearance. Before the trial Court the appellant pleaded not guilty. When the incriminating circumstances were put against the appellant under Section 313 of Cr.P.C. she denied the same and filed a written statement.

The trial Court on a detailed analysis of the evidence, placed before it, ultimately held that the appellant was able to rebut the presumption and that there was no circumstance warranting the execution of cheque in favour of the respondent. So holding, the trial Court found the appellant not guilty of the offence under Section 138of the Act and acquitted her under Section 255(1) of Cr.P.C. Aggrieved by the acquittal of the appellant, the respondent preferred an appeal before the High Court of Kerala at Ernakulam wherein the impugned judgment came to be rendered. The High Court while reversing the judgment of the trial Court found the appellant guilty of the offence and sentenced her to pay a fine of Rs.30 lakhs and in default to pay the fine amount directed her to undergo simple imprisonment for 1 1/2 years. It was further directed that on realization of the fine amount, the same should be paid to the complainant under Section 357(1) of Cr.P.C. Appellant was also directed to appear before the trial Court on 17.07.2010 to make the payment of the fine amount.

It was further directed that in default of appearance before the trial Court, the trial Court would be free to proceed against the appellant for taking coercive steps for executing the sentence. At the time when special leave petition was moved, based on the undertaking of the appellant, she was directed to deposit a sum of Rs.25 lakhs in the trial Court within two weeks. Subject to the said condition notice was issued and interim stay was also granted subject to fulfillment of the said condition. Subsequently, it was reported on10.11.2010 that the amount directed to be deposited was also deposited.

**OBSERVATIONS:**

If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour.

The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt."This Court, therefore, clearly opined that it is not necessary for the defendant to disprove the existence of consideration by way of direct evidence.

The standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which he relies.

Presumption drawn under a statute has only an evidentiary value. Presumptions are raised in terms of the Evidence Act. Presumption drawn in respect of one fact may be an evidence even for the purpose of drawing presumption under another."Applying the above said principles to the case on hand, we find that the judgment of the trial Court in having drawn the conclusions to the effect that the appellant sufficiently rebutted the initial presumption as regards the issuance of the cheque under Sections138 and 139 of the Act, was perfectly justified. We also find that the preponderance of probabilities also fully support the stand of the appellant as held by the learned trial Judge.

**HELD:**

The judgment of the High Court in having interfered with the order of acquittal by the learned trial Judge without proper reasoning is, therefore, liable to beset aside and is accordingly set aside. Consequently, the conviction and sentence imposed in the judgment impugned is also set aside. Having regard to our above conclusions, the amount deposited by the appellant with the trial Court in a sum of Rs.25 lakhs with accrued interest, if any, shall be refunded to her forthwith on production of a copy of this judgment. The appeal stands allowed with the above directions.