

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

Crl.Rev.Pet.No. 382 of 2007 ()

**AGAINST THE JUDGMENT IN CRA 383/2005 of ADDL. DIST. & SESSIONS COURT
(ADHOC) FAST TRACK III, PATHANAMTHITTA**

AGAINST THE JUDGMENT IN CC 313/2004 of J.M.F.C.- II, PATHANAMTHITTA

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**K.R.ARAVINDAKSHAN NAIR,
VILLAKATH HOUSE, KUMBAZHA,
PATHANAMTHITTA.**

**BY ADVS.SRI.GRASHIOUS KURIAKOSE
SMT.CELINE JOSEPH**

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

**1. SAJIKUMAR,
ALUMTHITTAMANNIL,
MANGARAM,
KONNY.**

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

**R1 BY ADV. SRI.S.NIDHEESH
R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21-
08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl. R. P. No.382 of 2007

Dated this the 21st day of August, 2015

ORDER

The revision petitioner is the appellant in Crl.A.383/05 on the file of Additional District and Sessions Court-III, Pathanamthitta, challenges the judgment of conviction for offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'Act'). He was convicted by the Judicial First Class Magistrate -II, Pathanamthitta in C.C. 313/2004 under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for 6 months and pay a compensation of Rs.4,25000/- under Section 357(3) Cr.P.C. Against that, he preferred Crl. Appeal 383/05, wherein the findings of the court below was confirmed and dismissed the appeal. Against that, the accused approached with this revision petition.

2. The first respondent's case in the trial court was that in discharge of a debt, revision petitioner issued a cheque for Rs.4 lakhs drawn on Kumbazha Service Co-

operative Bank, when it was presented for encashment it was dishonored for the reason, 'funds insufficient'. First respondent demanded the due amount by giving a notice in writing to the revision petitioner. Even after, there was no payment and a complaint was filed in the Judicial First Class Magistrate Court-II, Pathanamthitta. To prove the offence, complainant was examined as PW1 and his documents were marked Exts.P1 to P6. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. He was examined as DW1 and his documents were marked as D1 to D6. The trial court after analysing the evidence, convicted the accused and sentenced him thereunder.

3. When the matter came up for hearing, the learned counsel appearing for the revision petitioner submitted that, they have settled the case out of court and not interested in proceeding the matter. The revision petitioner and first respondent filed Crl.M.A.4603/15 in which the revision petitioner, first respondent and the counsel appearing for the first respondent were signed.

When petitioners are settled the matter, there is no objection for recording the compromise entered by them. The learned counsel appearing for the first respondent submitted that he received the entire amount towards the due amount and he signed the compromise petition. In the circumstance, both parties are permitted to compound the matter. When the matter is compounded, it shall have the effect of acquittal under Section 320(8) of the Code of Criminal Procedure. As per Supreme Court decision **Damodar S. Prabhu V. Sayed Babalal H 2010 (5) SCC 663**, the revision petitioner is directed to pay a sum of Rs.5000/- as cost in the District Legal Service Authority, Pathanamthitta and produce the receipt in the Judicial First Class Magistrate Court, Pathanamthitta. He is directed to appear before trial court and pay the cost on 25.09.15, failing which, Magistrate is directed to issue warrant for realizing that amount.

In the result, the conviction and sentence passed by the trial court under Section 138 of the Negotiable Instruments Act is set aside and the accused is acquitted.

STK

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P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE