

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

Crl.Rev.Pet.No. 696 of 2007 ()

**AGAINST THE JUDGMENT IN CRL. APPEAL 159/2001 of ADDL. SESSIONS COURT
(ADHOC-1), THALASSERY**

AGAINST THE JUDGMENT IN CC 1065/1996 of J.F.M.C.-I, KANNUR

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

**K. BALAKRISHNAN, S/O.KUNHAPPA,
AGED 47 YEARS, RESIDING AT KALATHIL HOUSE,
P.O.KIZHUNNA, KANNUR TALUK, KANNUR DISTRICT.**

BY ADV. SRI.R.SURENDRAN

RESPONDENT(S):

- 1. A.P. ABDUL SALAM, AGED 44 YEARS,
S/O.ERMULLAN,
AMBADI HOUSE, KOTTALI ROAD,
P.O.PALLIKUNNU, KANNUR TALUK, KANNUR DISTRICT.**
- 2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.**

R1 BY ADV. SRI.P.U.SHAILAJAN

R2 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 12-
11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.696 of 2007

Dated this the 12th of November, 2015

ORDER

The revision petitioner, who is the appellant in Crl. Appeal 159/2001 on the file of the Addl. Sessions Judge, Adhoc-I, Thalassery challenges the concurrent findings of conviction under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the 'N.I. Act'). He was accused in C.C.1065/96 on the file of the Judicial First Class Magistrate-I, Kannur and convicted for offence punishable under Section 138 of the N.I. Act and sentenced to undergo simple imprisonment for 6 months under Section 138 of N.I. Act and compensation of Rs.90,000/- under Section 357(3) Cr.P.C. Against that, he preferred the above appeal, in which the conviction was confirmed and appeal was dismissed. Being aggrieved by that, he preferred this revision petition.

2. Complainant in the trial court is the first

respondent in this revision petition. The complainant's case is that, accused borrowed a sum of Rs.90,000/- from him and in discharge of that debt, he issued Ext.P1 cheque. When the cheque was presented for encashment, it was dishonoured for the reason of funds insufficient. The complainant demanded the due amount by giving a notice in writing to the accused, which was received by the accused and no repayment thereafter. In the circumstance, a complaint was filed in the trial court.

3. During trial, complainant was examined as PW1 and his documents were marked as Exts.P1 to P7. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. He examined DW1 and DW2 and produced Ext.D1. The trial court after sifting and weighing the evidence on record convicted the accused.

4. When the matter came up for hearing, the learned counsel appearing for the revision petitioner submitted that both parties settled the matter and they filed Crl.M.A.6328/2015. I have gone through the averments in

the above petition. The revision petitioner and his counsel and the first respondent and his counsel signed in the compounding petition. They mutually agreed to settle the matter for a sum of Rs.22,000/-. In the light of the above agreement, no harm in compounding the matter for a sum of Rs.22,000/-. However, petitioner already deposited Rs.25,000/- in the Judicial First Class Magistrate Court-1, Kannur and he is entitled to get back a sum of Rs.3000/- from that amount. When the matter is settled as per a compromise, the accused is entitled for an acquittal as per Section 320(8).

In the result, conviction and sentence passed by the trial court, which was upheld by the appellate court under Section 138 of the N.I. Act is set aside and accused is set at liberty. The trial Magistrate shall disburse Rs.22,000/- to the first respondent complainant and return Rs.3000/- to the revision petitioner. This revision petition is disposed of as above.

**P.D. RAJAN,
JUDGE**

STK

//TRUE COPY//

P.A. TO JUDGE