

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

Crl.Rev.Pet.No. 1291 of 2009 ()

AGAINST THE JUDGMENT IN CRA 40/2008 of COURT OF ADDL.SESIONS JUDGE
FAST TRACK COURT NO.III (ADHOC), MANJERI DATED 05-11-2008
AGAINST THE JUDGMENT IN ST 86/2006 of J.M.F.C.-II(FOREST OFFENCES),
MANJERI DATED 31-12-2007

REVISION PETITIONER/APPELLANT - ACCUSED:

M.K.MOOSA @ KUNHAPPU,
S/O.HAMZA HAJI, MANNITHODI, ARAVANKARA
POOKKOTTUR P.O., ERNAD TALUK.

BY ADVS.SRI.K.SHIBILI NAHA
SMT.A.LOWSY

RESPONDENTS/COMPLAINANT & STATE:

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1. MOHAMMED HAJI, S/O.MAMMEDKUTTY,
CHENATTKUZHIAN KOLATHINGAL HOUSE, MANIPARAMBA
MONGAM P.O., ERNAD TALUK.
 2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R,R1 BY ADV. SRI.P.VIJAYA BHANU
R,R1 BY ADV. SRI.P.VENUGOPAL (1086/92)
R2 BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
09-01-2015, ALONG WITH CRRP. 1737/2009, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

C.T.RAVIKUMAR, J.

Crl.R.P.Nos.1291 & 1737 of 2009

Dated 9th January, 2015

ORDER

The accused in S.T.No.86 of 2006 on the files of the Court of Judicial First Class Magistrate-II (Forest Offences), Manjeri is the revision petitioner in the former revision petition and the complainant therein is the revision petitioner in the latter revision petition. The petitioner in the former revision petition was tried for an offence under Section 138 of the Negotiable Instruments Act and he was found guilty and convicted thereunder and sentenced to undergo simple imprisonment for three months and to pay ₹1,00,000 to the complainant as compensation under section 357(3) Cr.P.C. and in default of payment of compensation to undergo simple imprisonment for one month. The accused took up the matter in appeal as Crl.A.No.40 of 2008 before the Additional Sessions Judge, Fast Track Court No.III (Adhoc), Manjeri. The appeal was allowed in part. The conviction was confirmed and the sentence to pay compensation under Section 357(3) Cr.P.C. was set aside. It is against the said judgment that the captioned criminal revision petitions have been filed. Pending the revision petitions the revision petitioners therein who are

respectively the accused and the complainant, amicably settled the issues and a joint statement under section 147 of the Negotiable Instruments Act has been filed. True that in terms of Section 147, N.I.Act the offence under Section 138, N.I.Act is compoundable and the question whether an offence under Section 138, N.I.Act could be compounded at the appellate stage or thereafter is also no more *res integra* in the light of the decision of the Hon'ble Apex Court in **K.M.Ibrahim v. K.P.Mohammed (Justice Altamas Kabir & Justice Cyriac Joseph) (AIR 2010 SC 276)**. In the light of the dictum laid down by the Hon'ble Apex Court in the aforesaid decision there cannot be any doubt with respect to the position that even at the stage of revision compounding of an offence under Section 138 of the Negotiable Instruments Act is possible and permissible and in the circumstances I do not find any reason to decline permission to the parties to compound the aforesaid offence. Since the parties have already settled the issues imbibing the spirit of Section 147 of the Negotiable Instruments Act I allow the parties to compound the offence in terms of the settlement arrived at between them. Consequently, the judgments of the courts below are set aside and the revision petitioner in the former revision petition is acquitted of the charge under Section 138 of the Negotiable

Instruments Act. In the light of this order the accused viz., the revision petitioner in the former revision petition is entitled to get refunded the deposit made by him before the trial Court pursuant to the earlier order of this Court on appropriate application, before the trial court. Accordingly, the revision petitions are disposed of.

Sd/-
C.T.RAVIKUMAR
Judge

TKS