

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

Crl.Rev.Pet.No. 1713 of 2009 ()

**AGAINST THE JUDGMENT IN CRL.APPEAL 18/2008 of ADDL. SESSIONS COURT
FAST TRACT (ADHOC)-II, KOZHIKODE**

**AGAINST THE JUDGMENT IN ST 1727/2006 of SPL.J.M.F.C. FOR TRIAL OF MARAD
CASES, KOZHIKODE**

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

**JAYARAMAN N.V.,
S/o.CHATHUKUTTY,
NOCHYATH VALAPPIL HOUSE,
KEEZHARIYUR P.O., KOYILANDY.**

BY ADV. SRI.M.ASOKAN

RESPONDENT(S)/RESPONDENT/COMPLAINANT AND STATE::

**1. M/S.DHANESWARY CHITS PVT. LTD.
ROOM NO.C-23, 3RD FLOOR, MALABAR GATE,
RAM MOHAN ROAD, CALICUT
REPRESENTED BY ITS MANAGER, V.N.KUTTY
S/O.K.P.VASUDEVAN NAIR.**

**2. STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.**

**R1 BY ADV. SRI.T.G.RAJENDRAN
R2 BY PUBLIC PROSECUTOR SRI. N. SURESH**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20-
10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.1713 of 2009

Dated this the 20th of October 2015

ORDER

Revision petitioner, who is the appellant in Crl. Appeal 18/08 on the file of Additional Sessions Judge, Fast Track (Adhoc-II), Kozhikode 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 S.T.1727/06 on the file of the Special Judicial First Class Magistrate (Marad Cases), Kozhikode and convicted under Section 138 of the N.I. Act and sentenced to imprisonment for three months and to pay a sum of Rs.1,62,966/- as compensation under Section 357 (3) Cr.P.C. Against that he preferred the above appeal, in which the conviction was confirmed. Being aggrieved by that, he preferred this revision petition.

2. The complainant's case in the trial court is that, he is conducting a Private Chitty Company under the name, M/s.Dhaneswari Chits Pvt. Ltd. The chit was auctioned by the subscriber and the complainant paid the

amount. At the time of receiving the chit amount, accused was a surety to the subscriber. After receiving of the amount, the subscriber defaulted the instalments. The accused, as guarantor of the subscriber, issued Ext.P2 cheque in discharge of that liability. When it 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, even after receipt of that notice, there was no repayment. In the circumstance, the complaint was filed in the trial court.

3. During trial, complainant was examined as PW1 and his documents were marked as Exts. P1 to P6. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. He did not adduce any defence evidence. The trial court after sifting and weighing the evidence on record, convicted the accused. Against that he preferred an appeal, in which, the appellate court confirmed the conviction of the trial court. Being aggrieved by that, he preferred this revision

petition.

4. When the matter came up for hearing, the learned counsel appearing for the revision petitioner submitted that the entire cheque amount was paid by the revision petitioner to the first respondent and he settled the matter out of court and filed Crl.M.A.5886/15. The first respondent and the revision petitioner signed in the compounding petition. Both counsel also signed in the compounding petition. When the parties settled the matter out of court and both parties are present and admit the settlement, this court permit them to compound the matter. According to Section 147 of the Negotiable Instruments Act, notwithstanding anything contained in the Code of Criminal Procedure, every offence punishable under this Act shall be compoundable. When the matter is compounded, the accused revision petitioner in this case is entitled for an acquittal under Section 320(8) of the Cr.P.C.

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 set at liberty. He submitted that, a sum of Rs.80,000/- had been deposited in the Special Judicial First Class Magistrate Court (Marad Cases), Kozhikode as per the direction. If any petition is filed by the revision petitioner in this regard, the trial court shall consider and return the amount to the accused forthwith and this revision petition is disposed as above. When the matter is compounded by the parties, the petitioner is directed to pay Rs.500/- as per the decision of the apex court in **Damodar S. Prabhu V. Sayed Babalal H., AIR 2010 SC 1907** in the District Legal Service Authority, Kozhikode within one week from today and produce the receipt in the trial court.

STK

//TRUE COPY//

P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE