

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

Crl.Rev.Pet.No. 165 of 2015 ()

**CRA 704/2011 of ADDL.DISTRICT COURT, THRISSUR
CC 172/2008 of J.M.F.C.-II,THRISSUR**

REVISION PETITIONER(S)/RESPONDENT NO.1/COMPLAINANT:

**THAIKKATTIL ALUMINIUM AGED 75 YEARS
SHORNUR ROAD
THRISSUR-1 REPRESENTED BY ITS MANAGING PARTNER T M JOHNY
S/O.MATHEW, THAIKKATTIL HOUSE, KOTTEKKAD
P.O.KUTTOOR.**

**BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.K.R.ARUN KRISHNAN**

RESPONDENT(S)/APPELLANT/ACCUSED/STATE OF KERALA:

- 1. TONY.T.L.
THENAMKUDAM HOUSE, ELTHURUTHU P.O.
THRISSUR DISTRICT-680001.**
- 2. STATE OF KERALA
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM-682031.**

**R1 BY ADV. SRI.MAHESH V.MENON
R BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN**

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
06-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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C.T.RAVIKUMAR, J.

Crl.R.P. No.165 of 2015

Dated this the 6th day of February, 2015

ORDER

This Revision Petition is directed against the judgment in Crl.Appeal No.704/2011 dated 26.03.2012 of the Court of Additional Sessions Judge - I, Thrissur. The first respondent was tried for an offence under Section 138 of N.I. Act in CC No.172/2008 before the Court of Judicial First Class Magistrate - II, Thrissur. After evaluating the evidence on record the learned Magistrate found that the complainant has succeeded in proving commission of an offence under Section 138 of the N.I. Act by the first respondent and accordingly convicted him thereunder. Upon such conviction he was sentenced to undergo simple imprisonment for three months besides directing him to pay a compensation for Rs.1,36,881/- under Section 357 (3) of the Code of Criminal Procedure. In default of payment of compensation he was directed to undergo simple imprisonment for three months. Aggrieved by the same the first respondent preferred

CrI.Appeal No.704/2011. Pending the appeal the parties amicably settled the matter in the Adalath. Taking note of the settlement arrived at between the parties in the Lok Adalath the appeal was allowed as per the impugned judgment. Consequently, the judgment in CC No.172/2008 passed by the learned Magistrate was set aside and the first respondent was acquitted under Section 320(8) of the Code of Criminal Procedure. The first respondent who, by virtue of the said settlement, was liable to pay a balance amount of Rs.39,000/- even after effecting a payment of Rs.71,000/- did not honour the said liability and taking advantage of the judgment of acquittal evaded the payment. Virtually, it is in the said circumstances, that the petitioner was constrained to file this Revision Petition.

2. I have heard the learned counsel for the petitioner, learned counsel appearing for the first respondent and also the learned Public Prosecutor. In view of the submissions made by the learned counsel on both sides I do not think it necessary to consider the

maintainability of this petition and what exactly is the remedy available to the petitioner in the circumstances. The learned counsel appearing for the first respondent, very fairly submitted that in the light of the settlement arrived at between the parties, the first respondent was under an obligation to pay the balance amount of Rs.39,000/-. It is submitted by the learned counsel that it is only owing to certain unfortunate circumstances that the first respondent could not honour the settlement and discharge the liability and that some reasonable time may be granted to the first respondent to effect the payment of Rs.39,000/- honouring the agreement. In fact it is the ailment of his mother and her continuous treatment that disabled the first respondent from effecting the payment. In the light of the submissions of the learned counsel for both sides, I am of the view that this Revision Petition can be disposed of, granting some reasonable time for the said purpose. At the same time, I think it will be inapposite if this court has not looked in to and to make observations as relates the action on the

part of the Appellate Court in acquitting the first respondent under Section 320 (8) of the Code of Criminal Procedure. A bear perusal of the provisions under Section 320 of the Code of Criminal Procedure would reveal that compounding of offences invoking the power under Section 320 would be available only in respect of offences punishable under the sections of Indian Penal Code specified in the first two columns of the table one and two given under Section 320. True that an offence under Section 138 is compoundable in view of the provisions under Section 147 of the NI Act. At the same time there is no provision akin to Section 320(8) Cr.P.C. in the N.I. Act. The Hobourable Apex Court had occasion to consider the said aspect. The Apex Court found that if even after allowing the parties to compound the offence could not be entered in to in appropriate cases it would cause injustice. At the same time, Hon'ble Apex Court found that the provisions under Section 320(8) is applicable only to the offences under the Indian Penal Code specified in the tables under Section 320 and

observed that in said circumstances the absence of a provision akin to Section 320(8) Cr.P.C. would create a legal vacuum. In such circumstances in the interest of justice it is only proper to imbibe the spirit under Section 320(8) Cr.P.C. True that in the light of the decisions of the Hon'ble Apex Court on the subject, it is permissible to acquit the accused of the charge under Section 138 N.I. Act. I do not think that the matter requires to be remitted owing to such technical reasons, in the light of the aforementioned submissions. Since, the first respondent has expressed his willingness to pay the amount remaining to be paid to the revision petitioner. I am inclined to dispose of the Revision Petition granting a period of one month from the date of receipt of copy of this order to the first respondent to pay the balance amount of Rs.39,000/- to the revision petitioner.

C.T.RAVIKUMAR, JUDGE

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