

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

Crl.Rev.Pet.No. 306 of 2015 ()

**AGAINST THE JUDGMENT IN CRL.A.NO.517/2013 of VI ADDL.DISTRICT AND SESSIONS
COURT, ERNAKULAM DATED 05-08-2014**

**AGAINST THE JUDGMENT IN C.C.NO.2423/2009 of JUDICIAL FIRST CLASS
MAGISTRATE COURT - IV, ERNAKULAM DATED 30-09-2013**

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**RAJASEKHARAN C, AGED 50 YEARS,
S/O. SIVARAMAKRISHNAN, Q FLAT 37, FACT,
UDYOGAMANDAL, ELOOR, ERNAKULAM - 683 501.**

**BY ADVS.SRI.DIPU.R
SMT.DHANYA BABU
SMT.P.A.PRIYA**

RESPONDENT(S)/STATE AND COMPLAINANT:

- 1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**
- 2. N.GOPAL
S/O. J.NANDALAL, ROHINI NIVAS, KEEREMPILLY ROAD,
KONGORPILLY, NORTH PARAVUR,
ERNAKULAM DISTRICT - 683 513.**

**R1 BY PUBLIC PROSECUTOR SRI.N.SURESH.
R2 BY ADV. SRI.K.A.SIYAD**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06-03-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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K. Ramakrishnan, J.

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Crl.R.P.No.306 of 2015

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Dated this, the 06th day of March, 2015.

O R D E R

Accused in C.C.No.2423/2009 on the file of the Judicial First Class Magistrate Court - IV, Ernakulam is the revision petitioner herein.

2. The case was taken on file on the basis of a private complaint filed by the second respondent against the petitioner alleging offence under Section 138 of the Negotiable Instruments Act (hereinafter called 'the Act').

3. The learned magistrate, after trial, found the revision petitioner guilty under Section 138 of the Act and sentenced him to undergo simple imprisonment for one month and also to pay a fine of Rs.28,000/-in default to undergo simple imprisonment for fifteen days more and further directed that if the fine amount is realised, the same be paid to the complainant as compensation under Section 357(1)(b) of Code of Criminal Procedure. The revision petitioner filed Crl.Appeal No.517/2013 before the Sessions Court, Ernakulam which was made over to VIth Additional Sessions Court, Ernakulam for

disposal and the learned Additional Sessions Judge allowed the appeal in part confirming the order of conviction and fine and direction to pay compensation out of fine with default sentence, but, reduced the substantive sentence to imprisonment till rising of court. Against which, the above revision has been filed.

4. After the disposal of the appeal and before filing the revision, the matter has been settled between the parties and they filed Crl.M.A.No.1246/2015 before this court for recording composition and permission to compound and the same was allowed by this court by order dated 05.03.2015 relying on the decision of the Hon'ble Supreme Court in **Damodar S. Prabhu Vs. Sayed Babalal H. [JT 2010 (4) SC 457]** and **Madhya Pradesh State Legal Services Authority Vs. Prateek Jain and Another [2014 (4) KHC 115 (SC)]** on payment of cost and the cost was paid today and the application was allowed and permission was granted to compound and compounding is recorded. Once the compounding is recorded, then, it will have the effect of a deemed acquittal under Section 320(8) of Code of Criminal Procedure and that benefit must be given to the revision petitioner.

So, the revision is allowed and the order of conviction and sentence passed by the Judicial First Class Magistrate Court - IV, Ernakulam in C.C.No.No. 2423/2009 and modified by the VIth Additional Sessions Court, Ernakulam in Crl.Appeal No.517/2013 are set aside and the revision petitioner is acquitted of the charge levelled against him giving him the benefit of deemed acquittal under Section 320(8) of Code of Criminal Procedure on account of the recording of composition entered into between the parties. He is set at liberty. The bail bond if any executed by him will stand cancelled.

Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.Ramakrishnan, Judge.

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[True copy]

P.A to Judge