

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. 3663 of 2007 ()

**AGAINST THE JUDGMENT IN CRL APPEAL 710/2005 of ADDL. SESSIONS COURT
FAST TRACK (ADHOC), MAVELIKKARA**

AGAINST THE ORDER IN CC 151/2000 of J.M.F.C.-I, CHENGANNUR

REVISION PETITIONER(S)/APPELLANT./ACCUSED:

**ROY THOMAS, KOMADATHUSSERIL VEEDU,
KALLISSERI P.O., CHENGANNUR.**

BY ADV. SRI.S.RAJEEV

RESPONDENT(S)/STATE & COMPLAINANT:

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

**2. M.GOPINATHAN,
KAMALA NIVAS, THITTAMEL MURI, CHENGANNUR VILLAGE.**

R1 BY PUBLIC PROSECUTOR SRI. N. SURESH

**R2 BY ADV. SRI.D.KRISHNA PRASAD
ADV. SMT.O.K.SANTHA**

**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.3663 of 2007

Dated this the 20th of October 2015

ORDER

Revision petitioner, who is the appellant in Crl. Appeal 710/05 on the file of the Additional Sessions Judge, Fast Track (Adhoc) Court, Mavelikkara 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.151/2000 on the file of the Judicial First Class Magistrate-I, Chengannur and convicted for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment for five months and to pay a compensation of Rupees Two lakhs under Section 357(3) Cr.P.C., in default of payment of compensation, simple imprisonment for two months.

2. The complainant's case in the trial court was that, the accused borrowed a sum of Rupees Two lakhs 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 Judicial First Class Magistrate-I, Chengannur.

3. During trial, complainant was examined as PW1 and his documents were marked Exts. P1 to P8. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. The accused examined DW1 and marked Exts.D1 to D3. The trial court after sifting and weighing the evidence on record convicted the accused. Against that, he preferred an appeal and the appellate court confirmed the conviction of the trial court and dismissed the appeal. Being aggrieved by that, he approached this court with this revision petition.

4. When the matter came up for hearing, the learned

counsel appearing for the revision petitioner submitted that, the parties have settled the matter out of court and the entire cheque amount was given to the second respondent, the defacto complainant. They filed Crl.M.A.No.5893/15 and both parties are also present. When both parties settled the matter out of court, there is no objection in compounding the offence. According to 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. Hence, parties are permitted to compound the matter.

In the result, the conviction under Section 138 of the N.I. Act is set aside and accused is set at liberty. When the matter is compounded by the parties, as per the decision of the apex court in **Damodar S. Prabhu V. Sayed Babalal H., (AIR 2010 SC 1907)** the petitioner is

directed to pay a sum of Rs.1000/- in the Judicial First Class Magistrate Court-I, Chengannur within one week from today and this revision petition is disposed as above.

STK

//TRUE COPY//

P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE