

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 21ST DAY OF OCTOBER 2015/29TH ASWINA, 1937

Crl.Rev.Pet.No. 1512 of 2008 ()

**AGAINST THE JUDGMENT IN CRL. APPEAL 649/2007 of ADDL. SESSIONS COURT
(ADHOC)-II, ERNAKULAM**

AGAINST THE ORDER JUDGMENT IN C.C. 8/2004 of J.M.F.C.- II, KOCHI

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**P.S.SUDESH KUMAR, BHARATH AGENCIES,
IDAYATH HOUSE, EROOR NORTH, EROOR
PIN-682306.**

**BY ADVS.SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU**

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

**1. JANARDHANAN PILLA, VATTATHARA MADATHI,
PALLURUTHY TEUKKUM MURI, RAMESWARAM VILLAGE
COCHI TALUK, NOW RESIDING AT "THRIKKARTHIKA",
PANNIVIZHA, ADOOR, PIN-691 523.**

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

**R1 BY ADV. SRI.C.R.SURESH BABU
R2 BY PUBLIC PROSECUTOR SRI. N. SURESH**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21-
10-2015, ALONG WITH CRRP. 1513/2008, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.1512 and 1513 of 2008

Dated this the 21st of October 2015

ORDER

Revision petitioner, who is the appellant in Crl. Appeal 649/07 and 650/07 on the file of Additional Sessions Judge (Adhoc-II), Ernakulam challenges the concurrent findings of conviction under Section 138 of the Negotiable Instruments Act. He was accused in C.C.No.7/04 and C.C.8/04 on the file of the Judicial Magistrate Court II, Kochi and convicted under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment for one year each and to pay compensation of Rs.1,20,000/- and Rs.80,000/- respectively under Section 357(3) Cr.P.C. Against that, he preferred the Appeal.649/07 and 650/07, where the conviction was confirmed and modified the sentence. Being aggrieved by that, he preferred the Crl.R.P.1512 of 2008 and Crl.R.P.1513 of 2008.

2. The first respondent is the defacto complainant in the trial court. The complainant's case in the trial court is

that, the accused revision petitioner borrowed a sum of Rs.1 lakh and in discharge of that liability he issued Exts.P1 and Ext.P2 cheque leaves drawn on South Indian Bank, Thoppumpady Branch. When the cheque leaves were presented for encashment, it was dishonoured for the reason 'exceeds arrangement'. 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, the complaints were filed in the trial court.

3. During trial, complainant was examined as PW1 and his documents were marked Exts. P1 to P10. 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.

4. When the matter came up for hearing, the learned counsel appearing for the revision petitioner submitted that he settled the matter out of court and paid the entire

amount. They filed Crl.M.A.5922 and 5923/15. I have gone thorough the Criminal M.A., in which, he admitted that the entire cheque amount was paid to the first respondent. The revision petitioner and first respondent signed in both the Crl.M.As. Both counsel are also signed in the compromise petition. When petitioners come forward to settle the matter under Section 147 of the Negotiable Instruments Act and compounded the matter out of court, this court shall presume that the matter is compounded under Section 147 of the Negotiable Instrument Act. According to 147, notwithstanding anything contained in the Code of Criminal Procedure, every offence punishable under this Act shall be compoundable. When, these cases are compounded, it shall have the affect of an acquittal under Section 320(8) of the Cr.P.C.

In the result, the conviction and sentence passed by the trial court in C.C.7/04 and 8/04 are set aside and the accused is set at liberty. When the matter is compounded by the parties, a decision of the apex court in **Damodar**

S. Prabhu V. Sayed Babalal H., AIR 2010 SC 1907 is applicable and the petitioner is directed to pay Rs.1000/- in the High Court Legal Service Committee on 26.10.15.

STK

//TRUE COPY//

P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE