

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 1525 of 2008 ()

**AGAINST THE JUDGMENT IN CRL. APPEAL 342/2007 of I ADDL. SESSIONS COURT,
ERNAKULAM**

AGAINST THE JUDGMENT IN CC 329/2004 of J.M.F.C.-II, ALUVA

REVISION PETITIONER(S)/REVN. PETITIONER/APPELLANT.:

**GANESAN, S/O.VENKITESWARAN,
PANDARAPADATHIL VEEDU, PALLASSANA, CHITTOOR
PALAKKAD.**

BY ADV. SRI.DINESH MATHEW J.MURICKAN

RESPONDENT(S)/RESPONDENTS/RESPONDENTS.:

- 1. SHAJAHAN, AGED 27 YEARS,
S/O.KASSIM, PANAKKALVEEDU, F.A.C.T. ROAD,
THRIKKAKKARA, KALAMASSERY.**
- 2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

R1 BY ADV. SRI.E.D.GEORGE

R2 BY PUBLIC PROSECUTOR SRI. N. SURESH

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30-
11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.1525 of 2008

Dated this the 30th of November 2015

ORDER

Revision petitioner was accused in C.C.329/2004 on the file of the Judicial First Class Magistrate-II, Aluva for offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the N.I. Act). The complainant's case in the trial court is that, the accused borrowed a cheque for a sum of Rs.75,000/- 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 amount by giving a notice in writing and no repayment thereafter. In the circumstance, a complaint was filed in the trial court. The complainant is the first respondent in this revision petition.

2. During trial, complainant was examined as PW1 and his documents were marked Exts. P1 to P6. The

incriminating circumstances brought out in evidence were denied by the accused while questioning him. He examined DW1 to DW3 and produced Exts.D1 to D3(a). The trial court convicted the accused and sentenced to imprisonment for seven months under Section 138 of N.I. Act and to pay a compensation of Rs.75,000/- under Section 357(3) Cr.P.C., in default, sentence of four months and pay costs of Rs.1,000/- to the complainant. Against that he preferred Crl. Appeal 342/07 before Addl. Sessions Judge, Ernakulam, in which the conviction was confirmed and sentence was modified by the appellate court. Being aggrieved by that, he preferred this revision petition.

3. When the matter came up for hearing, the learned counsel appearing for the revision petitioner submitted that both parties settled the matter out of court and they filed Crl.M.A.No.6840/15. I have perused the Crl.M.A., in which revision petitioner and first respondent signed and both counsel were also signed. The first respondent submitted that the petitioner had paid the entire amount as per Ext.P1 cheque and no further grievance and he

signed Crl.M.A without any coercion or threat and with free mind after paying the amount. When both parties settled the matter out of court, there is no objection in compounding the case. According to Section 147 of the N.I. 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 revision petitioner is directed to pay a sum of Rs.1000/- in the High Court Legal Service Committee, Ernakulam on or before 2nd December 2015 and this revision petition is disposed of as above.

Post for reporting compliance on 02.12.15.

STK

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P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE