

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

Crl.Rev.Pet.No. 4477 of 2007 ()

**AGAINST THE JUDGMENT IN CRL. APPEAL 313/2006 of SESSIONS
COURT,TRIVANDRUM**

AGAINST THE JUDGMENT IN ST 4467/2005 of J..F.M.C.IV, TRIVANDRUM

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**ARUN, ARUN ADVERTISING,
P.B.NO.2426, SOMAN BUILDING, MURINJAPALAM,
THIRUVANANTHAPURAM, PERMANENTLY RESIDING AT KESAV,
TC.31/1275, PETTAH P.O., THIRUVANANTHAPURAM.**

BY ADV. SRI.M.SREEKUMAR

RESPONDENT(S)/RESPONDENTS/COMPLAINANT/STATE:

- 1. MATHRUBHOOMI PRINTING & PUBLISHING COMPANY,
MATHRUBHOOMI, THIRUVANANTHAPURAM.**
- 2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

**R1 BY ADV. SRI.G.P.SHINOD1
ADV. SRI.RAM MOHAN.G.**

R2 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 24-
11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.4477 of 2007

Dated this the 24th of November 2015

ORDER

Revision petitioner, who is the appellant in Crl. Appeal 313/06 on the file of the Sessions Judge, Thiruvananthapuram challenges the concurrent conviction under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the 'N.I.Act'). He was accused in S.T.4467/2005 on the file of the Judicial First Class Magistrate-IV, Thiruvananthapuram for offence punishable under Section 138 of the N.I. Act and he was convicted and sentenced to imprisonment for three months under Section 138 of N.I. Act and to pay a compensation of Rupees Two lakhs under Section 357(3) Cr.P.C., with costs of Rs.1,000/- under Section 359 Cr.P.C. with default, sentence for one month and 10 days. Against that he preferred an appeal, in which the sentence was modified by the appellate court. Being aggrieved by that, he preferred this revision petition.

2. The complainant's case in the trial court was that, the accused issued a cheque for a sum of Rupees Two lakhs drawn on Centurion Bank Ltd., PMG Junction, Thiruvananthapuram branch in discharge of a liability. 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 to the accused, which was received by the accused 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.

3. During trial, complainant was examined as PW1 and his documents were marked Exts. P1 to P5. 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 and the first

respondent submitted that, the parties have amicably settled the matter out of court and on 5.9.07, a sum of Rupees Two lakhs had been given to the first respondent and they filed Crl.M.A.No.6657/15. When both parties settled the matter out of court, there is no objection in compounding the case. According to 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 before 30th

November 2015 and this revision petition is disposed of as above.

Post for reporting compliance on 30.11.15.

STK

//TRUE COPY//

P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE