

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

Crl.Rev.Pet.No. 2785 of 2011 ()

JUDGMENT IN Crl.A 131/2010 OF ADDITIONAL SESSIONS COURT (ADHOC-III),
NORTH PARAVUR

JUDGMENT IN CC 872/2006 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT- III, ALUVA

REVISION PETITIONER/RESPONDENT/COMPLAINANT:

PAULSON P.VARKEY, S/O.VARKEY
PAINADATH HOUSE, NAYATHODU KARA, ANGAMALY
NAYATHODU PO, PIN 683 572.

BY ADV. DR.GEORGE ABRAHAM

RESPONDENTS/APPELLANT/:

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1. JAISON VARGHESE , S/O.C.J.VARGHESE
CHIRAMEL HOUSE, HOUSE NO.MVTRR 4/30/43/2389
MOOKOOTTIL TEMPLE ROAD, PETTA JUNCTION
POONITHURA P.O.
 2. M/S. WEST COAST CONCRETE PRODUCTS
REP. BY ITS MANAGING PARTNER JAISON VARGHESE
CHIRAMEL HOUSE, HOUSE NO.MVTRR 4/30/43/2389
MOOKOOTTIL TEMPLE ROAD, PETTA JUNCTION
POONITHURA P.O., PIN-682 317.
 3. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA. ERNAKULAM.
- R1,R2 BY ADV. SRI.V.M.ALI
R BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 03-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.2785 of 2011

Dated this the 3rd day of November, 2015

ORDER

The revision petitioner is the complainant in C.C.No.872 of 2006 on the files of the Court of the Judicial Magistrate of First Class-III, Aluva.

2. The accused was convicted by the trial court under Section 138 of the Negotiable Instruments Act and sentenced to simple imprisonment for three months and a fine of ₹5,00,000/-. Against the said conviction and sentence, the accused filed appeal. As per judgment dated 4.8.2011 in Crl.A.No.131 of 2010, the appellate court acquitted the accused for the offence under Section 138 of the Negotiable Instruments Act. Aggrieved by the said acquittal of the accused, the complainant before the trial court has come up with this revision petition.

3. Heard.

4. In view of the provisions of Sub Section 4 of Section 378 of the Code, the remedy of the complainant in a complaint

under Section 138 of the Negotiable Instruments Act to challenge the order of acquittal passed by the trial court or the appellate court, is to file appeal before the High Court after obtaining special leave. A Division Bench of this Court in **Omana Jose v. State of Kerala [2014 (2) KLT 504]** held that the complainant in a case under Section 138 of the Negotiable Instruments Act cannot challenge the order of acquittal before the Sessions Court under the proviso to Section 372 of the Code of Criminal Procedure and his remedy is only to file an appeal to the High Court with special leave under Section 378 (4) of the Code of Criminal Procedure. In view of the above reason, this revision petition is not maintainable.

In the result, this revision petition stands dismissed as not maintainable. Needless to say that this order will not take away the rights, if any, of the revision petitioner in seeking other remedies available to him under law.

Sd/-

**B. SUDHEENDRA KUMAR
JUDGE**