

**The Manager, Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Jan-31-2014

**Judge :** Honourable Mr.Justice Antony Dominic

**Appellant :** The Manager,

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE M.L.JOSEPH FRANCIS FRIDAY, THE 31<sup>ST</sup> DAY OF JANUARY 2014 11<sup>TH</sup> MAGHA, 1935 CrI.Rev.Pet.No. 148 of 2014 ()  
----- CrI.A.424/2009 of ADDL. SESSIONS JUDGE-I, THIRUVANANTHAPURAM ST8222007 of J.M.F.C.-I, THIRUVANANTHAPURAM REVISION PETITIONER(S)/APPELLANT/ACCUSED:  
----- Y.SHIBU S/O.YOHANNAN, CHAITHRAM, PARUTHIKUZHI THIRUVANANTHAPURAM-9. BY ADVS.SRI.P.K.NIJOY SMT.C.PRABITHA RESPONDENTS/RESPONDENTS/STATE AND COMPLAINANT: ----- 1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM - 682 031.

2. R.PURUSHOTHAMAN, S/O.A.RAGHAVAN, JALAJA BHAVAN, CHERUVAIKKAL SREEKARYAM.P.O, THIRUVANANTHAPURAM-17. R2 BY ADV. SRI.M.V.BOSE R2 BY ADV. SRI.VINOD MADHAVAN R2 BY ADV. SMT.NISHA

BOSE R1 BY PUBLIC PROSECUTOR SRI.LIJU V.STEPHEN. THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 3101- 2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: M.L.JOSEPH FRANCIS, J.

----- Crl. R.P. No.148 of 2014  
----- Dated 31st January, 2014

## ORDER

This Revision petition is filed by the accused in S.T.No.822 of 2007 on the file of the Judicial First Class Magistrate - I, Thiruvananthapuram, challenging the conviction and sentence passed against him for the offence punishable under Section 138 of N.I. Act. The cheque amount was `2,50,000/-. In the Trial Court, the accused was sentenced to undergo simple imprisonment for six months and he was directed to pay `2,50,000/- as fine and in default of payment of fine, to undergo simple imprisonment for three months. The appeal against the conviction and sentence was partly allowed.

2. I heard the learned counsel for the revision petitioner, learned counsel for the complainant and the public prosecutor.

3. The learned counsel appearing for the revision petitioner reiterated the same contention raised before the Trial Court and the appellate court. Learned counsel for the complainant supported the judgment of the court below.

4. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the Crl.R.P.No.148/14 2 complainant, that the complainant had validly complied with clauses (a) and (b) of the proviso to Section 138 of the N.I. Act and that the Revision petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the conviction. The said conviction has been recorded after a careful evaluation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the conviction so recorded concurrently by the courts below and

the same is hereby confirmed.

5. In the decision reported in Damodar S. Prabhu v. Sayed Babalal (2010(2) KHC428(SC)), it was held that in a case of dishonour of cheques, compensatory aspect of the remedy should be given priority over the punitive aspect. Considering the facts and circumstances of the case, I am of the view that sentencing the accused to pay a fine of Rs.2,50,000/- alone would meet the ends of justice. The said fine shall be paid as compensation under Section 357(1) of Cr.P.C. The Revision petitioner is permitted either to deposit the said fine amount before the Court below or directly pay the CrI.R.P.No.148/14 3 compensation to the complainant within one year from today and to produce a memo to that effect before the Trial Court in case of direct payment. If he fails to deposit or pay the said amount within the aforesaid period, he shall suffer simple imprisonment for one month by way of default sentence. The amount if any deposited in the trial court by the accused can be given credit to.

6. In the result, this Revision petition is disposed of confirming the conviction entered by modifying the sentence imposed on the revision petitioner. Sd/- M.L.JOSEPH FRANCIS, JUDGE. tgs (true copy) .

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