

**Sumangala vs Omana**

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**SooperKanoon Citation :** [sooperkanoon.com/1278326](http://sooperkanoon.com/1278326)

**Court :** Kerala

**Decided On :** Feb-19-2025

**Judge :** Honourable Mr.Justice K. V. Jayakumar

**Appeal No. :** Crl.Rev.Pet/23/2012

**Appellant :** Sumangala

**Respondent :** OMANA

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR  
WEDNESDAY, THE 19TH DAY OF FEBRUARY 2025 / 30TH MAGHA,  
1946 CRL.REV.PET NO. 23 OF 2012 AGAINST THE JUDGMENT  
DATED 20.09.2011 IN CRL.A NO.459 OF 2010 OF THE ADDITIONAL  
DISTRICT & SESSIONS COURT, FAST TRACK (ADHOC) COURT,  
MAVELIKARA ARISING OUT OF THE JUDGMENT DATED 13.08.2010  
IN CC NO.113 OF 2009 OF THE JUDICIAL MAGISTRATE OF FIRST  
CLASS- I, HARIPAD

REVISION PETITIONER/APPELLANT/ACCUSED: SUMANGALA,  
CHEMATHERIL, MUTHUKULAM NORTH, CHOOLATHERUV P.O. BY



4. On presentment, the cheque was returned unpaid stating the reason funds insufficient.

5. The complainant issued a statutory notice and thereafter filed the complaint.

6. In order to prove her case, the complainant was examined as

PW1 and Exts.P1 to P7 were marked. Thereafter, the accused was examined under Section 313(1)(b) of the Code of Criminal Procedure. The trial court, upon hearing the revision petitioner and the 1<sup>st</sup> respondent, convicted and sentenced the accused in the following manner:

15. In the result, the accused is sentenced to undergo simple imprisonment for 6 months u/s. 138 of N.I. Act. The accused is further directed to pay an amount of Rs.1,50,000/- as compensation u/s. 357(3) Cr.P.C. to the complainant. The compensation if not paid, shall be realised as fine imposed by court and shall be released to the complainant.

7. Aggrieved by the judgment of the trial court, the revision petitioner/accused approached the Sessions Court and preferred CrI.Appeal No.459/2010.

8. The learned Additional Sessions Judge, Mavelikara dismissed the appeal.

9. Aggrieved by the judgment of the learned Sessions Judge, accused preferred this revision petition.

10. I have heard the learned counsel for the revision petitioner and the respondents.

11. The learned counsel for the 1<sup>st</sup> respondent would submit that

the impugned judgment of the learned Sessions Judge is legally sustainable and no interference from this Court is warranted. The complainant has succeeded in proving the ingredients of Section 138 of the Act, beyond reasonable doubt. Moreover, the transaction is a genuine one. Both the trial court and appellate court

have correctly

appreciated the evidence on record and arrived at a proper

**conclusion.**

12. Per contra, the learned counsel for the revision

petitioner/accused would submit that the ingredients of Section 138 of the Negotiable Instruments Act are not satisfied by the complainant. The court below had failed to note that there is no legally enforceable debt as against the petitioner. The disputed cheque was not issued towards the discharge of legally enforceable debt.

13. It is further submitted that the disputed cheque was not supported by consideration. The trial court and appellate court ought not have invoked the presumption under Section 139 of the Act.

14. The appreciation of evidence by the trial court and the appellate court are wrong and incorrect. The execution of the cheque is not proved by the complainant.

15. The complainant has failed to discharge the initial burden as

to the drawal, execution and the handing over the cheque. Moreover, the revision petitioner/accused has succeeded in rebutting the presumption provided under Section 139 of the Act by a lesser standard of preponderance of probability.

16. The learned counsel for the revision petitioner/accused

submitted that even though he has urged several grounds in the revision memorandum, he is not intending to argue the matter on merits instead, the learned counsel seeks three months' time for effecting payment to the complainant.

17. Upon hearing the submissions and on perusal of records, I am of the view that Criminal Revision Petition is to be allowed in part. In the result,

- (a) The substantive sentence imposed in this matter is set aside.
- (b) The compensation of Rs.1,50,000/- ordered is confirmed. In default, the petitioner shall suffer simple imprisonment for two months.
- (c) The court below shall execute the order in the modified manner.
- (d) Three months time is granted to the revision petitioner for making payment.
- (e) If any amount is deposited in the trial court, the 1st respondent/complainant is entitled to withdraw it. With the above observation, the Criminal Revision Petition is disposed of. Sd/- K.V.JAYAKUMAR, JUDGE MMG

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