CNR : KLHC010255822017

2026:KER:62304

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

FRIDAY, THE 14TH DAY OF AUGUST 2026 / 23RD SRAVANA, 1948

CRL.REV.PET NO. 1551 OF 2017

AGAINST THE ORDER/JUDGMENT DATED 19.10.2017 IN Crl.A NO.200 OF 2016 OF ADDITIONAL DISTRICT & SESSIONS COURT -II, MUVATTUPUZHA

REVISION PETITIONER:

LIVI.P.VARGHESE,AGED 46 YEARS
SON OF LOSEPH, RESIDING EDAKKARAYIL HOUSE,
MEKKADAMPU, P.O.MUVATTUPUZHA, ERNAKULAM DISTRICT.

BY ADVS.
SHRI.L.RAM MOHAN
SRI.M.AUBREY ABRAHAM ISAAC

RESPONDENTS:

1 SREE GOKULAM CHITS AND FINANCE CO.(P) LTD.
ARCOT ROAD, KODAMBAKKAM, CHENNAI -600024,
REPRESENTED BY POWER OF ATTORNEY HOLDER, RAJEEV.M.B,
S/O.LATE PADMANABHAN NAIR, MANAGER (BUSINESS),
MUVATTUPUZHA BRANCH.

2 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY ADV SRI.MAHESH V RAMAKRISHNAN
SMT.MEGHA K.XAVIER, SR. PP

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ORDERS ON 05.08.2026, THE COURT ON 14.08.2026 DELIVERED THE FOLLOWING:

ORDER

The challenge in this revision petition is directed against the conviction and order of sentence imposed on the revision petitioner/accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the N.I. Act").

2. The revision petitioner is the sole accused in C.C. No. 449/2012 on the file of the Judicial First Class Magistrate Court-II, Muvattupuzha.

3. The case of the complainant, in brief, is as follows:

The complainant is a private limited company having its registered office at Chennai. The complainant has branches all over India, including one at Muvattupuzha, and is engaged in chitty business. The accused was a subscriber of a chitty run by the complainant having a sala of Rs. 10,00,000/-. The accused later bid the chitty and received the chitty amount. Thereafter, he defaulted in payment of the subscription amount. Subsequently, on 17.03.2010, the accused issued a cheque in favour of the complainant for an amount of Rs. 5,92,329/-, drawn on South Indian Bank, Muvattupuzha Branch, in discharge of his liability. However, when the complainant sent the said cheque for collection through Federal Bank Limited, Muvattupuzha Branch, the same was returned with a memo stating the reason “Funds Insufficient”. Thereafter, the complainant issued a statutory notice dated 29.03.2010 to the accused, informing him of the dishonour and demanding payment of the cheque amount. Although the accused received the said notice, he did not pay the cheque amount. Thus, the accused is alleged to have committed an offence punishable under Section 138 of the N.I. Act.

4. During the trial, on the side of the complainant, the Power of Attorney Holder of the complainant company was examined as PW1, and another witness was examined as PW2. The documents produced on behalf of the complainant were marked as Exts. P1 to P11. No oral or documentary evidence was adduced on behalf of the accused.

5. Upon an appreciation of the oral and documentary evidence on record, the trial court found the accused guilty of the offence punishable under Section 138 of the N.I. Act and convicted and sentenced him to undergo simple imprisonment

for a period of two months and to pay a sum of ₹6,00,000/- to the complainant as compensation under Section 357(3) of the Cr.P.C. In default of payment of the compensation, the accused was directed to undergo simple imprisonment for one month.

6. Aggrieved by the said judgment, the accused preferred Criminal Appeal No. 200/2016, and the learned Additional Sessions Judge, Muvattupuzha, who heard the appeal, dismissed the same. Highly aggrieved thereby, the accused has preferred the present criminal revision petition.

7. Heard the learned counsel for the revision petitioner and the learned counsel appearing for the first respondent. The records have also been perused.

8. The learned counsel for the revision petitioner contended that the trial court as well as the appellate court failed to appreciate the facts and evidence brought on record in the proper perspective and arrived at a wrong conclusion regarding the guilt of the revision petitioner. Relying on the decision in **A.C. Narayanan v. State of Maharashtra and Another** [(2014) 11 SCC 790], the learned counsel contended that PW1, the Power of Attorney Holder of the complainant company, who

was examined to prove the alleged transaction in this case, had no personal knowledge regarding the transaction and, therefore, was incompetent to give evidence to prove the transaction alleged in this case. According to the learned counsel, as the transaction alleged in this case and the execution of Ext. P2 cheque remained unestablished by convincing evidence, the conviction of the accused was not legally sustainable and, hence, the accused was liable to be acquitted by allowing this revision petition.

9. Per contra, the learned counsel appearing for the first respondent/complainant submitted that there was no illegality, impropriety, or perversity in the concurrent findings rendered by the trial court and affirmed by the appellate court. It was contended that both the transaction and the execution of Ext. P2 cheque stood duly proved by cogent oral and documentary evidence. It was, therefore, submitted that the revision petition is devoid of merit and liable to be dismissed.

10. Before delving into a detailed discussion regarding the scope of interference in the impugned judgment, it is worthwhile to note that the scope of interference in a revision petition is too limited. By a series of judicial pronouncements, it

is well settled that a court exercising revisional jurisdiction will interfere with the findings of the trial court or the appellate court only when such findings suffer from illegality, impropriety, or perversity. Unless it is shown that the judgment of the trial court or the appellate court is perverse, unreasonable, or suffers from non-consideration of relevant material or misreading of evidence, interference in revision is not warranted. The revisional court cannot reappreciate the evidence as an appellate court and substitute its own view merely because such a view is possible.

11. In **State of Kerala v. Puttumana Illath Jathavedan Namboodiri** [AIR 1999 SC 981], the Hon'ble Supreme Court held thus:

> *"In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as*

well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."

12. Keeping in view the above principles and reverting to the facts of the present case, it can be seen that the prosecution case arises out of a chitty transaction wherein the accused is allegedly a subscriber to a chitty of which the complainant company is the foreman. The case of the complainant is that the accused bid for the chitty in an auction, but the future instalments were not paid regularly, and a total amount of Rs. 5,92,329/- fell due. According to the complainant, it was towards the discharge of the said liability that Ext. P2 cheque was issued by the accused.

13. In order to prove the transaction alleged and the execution of Ext. P2 cheque, the complainant examined two witnesses as PW1 and PW2. Of the said witnesses, PW1 is the Power of Attorney holder of the complainant company. On examination before the court, PW1 filed an affidavit in lieu of his chief examination, reiterating the averments contained in the complaint. During cross-examination, he categorically deposed that from 2005 onwards, he had been working in the

complainant company and that the chitty transaction took place in the year 2008–2009. According to him, he knew the accused personally. He further deposed that it was on 17.03.2010 that the accused issued the cheque and that the same was received by the Branch Manager.

14. The evidence of PW1 was assailed by the learned counsel for the revision petitioner mainly on the ground that PW1 did not have any direct knowledge regarding the transaction alleged in this case and, therefore, his evidence could not be acted upon to prove the transaction alleged in this case. While considering the said submission, it is to be noted that, as per Section 142 of the NI Act, a complaint under Section 138 of the NI Act can be instituted by the payee or holder in due course of a cheque. However, a company, being a juristic person, cannot act on its own and must necessarily function through a human agency. Therefore, a complaint under Section 138 of the NI Act can be initiated through a Power of Attorney holder of the company. However, now, by a series of judicial pronouncements, it is well settled that a Power of Attorney holder can give evidence regarding the transaction alleged in a Section 138 matter only if he has personal

knowledge regarding the transaction alleged in the case. In A.C. Narayanan's case (cited supra), the Hon'ble Supreme Court held that, in the complaint, there must be a specific averment showing the knowledge of the Power of Attorney holder regarding the transaction. In the case at hand, I do agree that the complaint nowhere states that PW1 has direct knowledge regarding the transaction alleged in this case.

15. However, in the present case, the prosecution does not rest solely on the testimony of the Power of Attorney holder to prove the transaction alleged and the execution of Ext. P2 cheque. Apart from PW1, the General Manager of the complainant company, who worked during the relevant period, was also examined as PW2 in this case. During examination before the court, PW2 gave evidence vividly narrating the entire transaction, the issuance of the cheque, and the circumstances under which the cheque came to be executed. The evidence of PW2 clearly shows that he had direct knowledge regarding the transaction in this case. In unequivocal terms, he deposed that it was in his presence that the accused entered the amount in the cheque and signed it. Therefore, the transaction alleged in this case has been proved through the evidence of PW2, coupled

with the documentary evidence produced in this case. Therefore, the contention founded on the absence of an averment regarding the personal knowledge of the Power of Attorney holder is inconsequential.

16. As already stated, the evidence of PW2, coupled with the documentary evidence produced in this case, was found sufficient by the trial court to establish the guilt of the accused for the offence punishable under Section 138 of the NI Act. The appellate court, on an independent reappraisal of the evidence, concurred with the said finding.

17. Considering all these aspects, I find no reason to interfere with the well-considered judgment of conviction passed by the trial court, which was confirmed in appeal by the learned Additional Session Judge. However, considering the nature of the offence, the year of the alleged transaction and other attending circumstances, I am of the view that the sentence imposed on the accused is on the higher side, and the same has to be modified in the interest of justice.

In the result, this revision petition is allowed in part, and without altering the finding, the sentence imposed on the accused for offence punishable under Section 138 of the NI Act is modified as follows:

> The accused shall undergo imprisonment till the rising of the court and shall pay compensation of Rs.6,00,000/- to the complainant under Section 357(3) of Cr.P.C. In default of payment of compensation, the accused shall undergo simple imprisonment for two months. If the revision petitioner/accused had deposited any amount before the trial court pursuant to the direction, if any, issued by the appellate court or by this court, the said amount will be treated as part of the compensation to be paid by him. The revision petitioner shall appear before the trial court on 07.12.2026 to receive the sentence.

Sd/-

JOBIN SEBASTIAN

JUDGE

vdv