2026:KER:63008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

MONDAY, THE 17TH DAY OF AUGUST 2026 / 26TH SRAVANA, 1948

CRL.REV.PET NO. 535 OF 2007

AGAINST THE JUDGMENT DATED 23.09.2006 IN Crl.A NO.972 OF 2005 OF THE IV ADDITIONAL SESSIONS COURT, ERNAKULAM ARISING OUT OF THE JUDGMENT DATED 29.10.2005 IN CC NO.1543 OF 2002 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I, ALUVA

REVISION PETITIONER/APPELLANT/ACCUSED:

MADHUSOODHANAN MENON
AGED 67 YEARS,
MUNDIYATH HOUSE,
NEAR ROGATE ASRAMAM,
KUNNUMPURAM, DESOM P.O.,
ALUVA.

BY ADVS.
SRI.K.G.ARUN
SHRI.V.MANOJ KUMAR
SMT.PRAISHEEL PRAKASAM
SRI.TOM JOSE (PADINJAREKARA)
SHRI.VIVEK VARGHESE P.J.
SRI.VARUGHESE M EASO
SMT. ANUPAMA SIBI, AMICUS CURIAE

RESPONDENTS/RESPONDENT/COMPLAINANT:

1 **A.RADHAKRISHNAN**
'VIMAL KRISHNA',
DESOM P.O., ALUVA.

2 **STATE OF KERALA**
PUBLIC PROSECUTOR,

**HIGH COURT OF KERALA,
ERNAKULAM.**

BY SMT. TANYA JOY, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 13.08.2026, THE COURT ON 17.08.2026 DELIVERED THE FOLLOWING:

O R D E R

The challenge in this revision petition is directed against the conviction and sentence imposed on the revision petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the N.I. Act"). The revision petitioner is the sole accused in C.C. No.1543/2002 on the file of the Judicial First Class Magistrate Court-I, Aluva.

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

The accused and the complainant are known to each other. The accused borrowed an amount of ₹90,000/- from the complainant as a loan. When the complainant demanded repayment, the accused issued a cheque dated 11.01.2002 for the said amount, drawn on the Union Bank of India, Aluva Branch. When the cheque was presented for collection, it was dishonoured with the endorsement "account closed". Thereafter, the complainant issued a statutory notice informing the accused of the dishonour and demanding payment of the cheque amount. Despite receipt of the notice, the accused failed to make the payment. Hence, the complaint was filed alleging commission of the offence under Section 138

of the N.I. Act.

3. During the trial, the complainant was examined as PW1, and Exts.P1 to P6 were marked on his side. On the side of the defence, three witnesses were examined as DW1 to DW3, and Exts.D1 to D5 were marked.

4. Upon 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 him. He was sentenced to undergo simple imprisonment for six months and to pay compensation of ₹90,000/- to the complainant. In default of payment of compensation, he was directed to undergo simple imprisonment for three months.

5. Aggrieved by the said judgment, the accused preferred Crl. Appeal No.972 of 2005 before the Sessions Court, Ernakulam. The learned Additional Sessions Judge-IV, Ernakulam, allowed the appeal in part. While confirming the conviction under Section 138 of the N.I. Act, the appellate court modified the sentence by directing the accused to undergo simple imprisonment for one month and to pay compensation of ₹90,000/- to the complainant under Section 357(3) of the Cr.P.C. The default sentence imposed by the trial court was also affirmed.

6. Heard Smt. Anupama Sibi, the learned Amicus Curiae, and Smt. Taniya Joy, the learned counsel appearing for the second respondent. The records were also perused.

7. The learned Amicus Curiae submitted that the trial court as well as the appellate court failed to appreciate the facts and evidence in its proper perspective and recorded the conviction hastily. According to the learned counsel, the defence of the accused that the cheque in question was a security cheque issued to one Anil Kumar, and that the complainant had misused the said cheque, was not properly considered by either court. It was contended that, had the defence evidence been properly appreciated, the accused would have been acquitted.

8. Per contra, the learned Public Prosecutor submitted that the concurrent findings of the courts suffer from no illegality, impropriety or perversity warranting interference by this Court. It was contended that both courts had properly appreciated the oral and documentary evidence and had rightly found the accused guilty on the basis of the cogent and convincing evidence adduced by the complainant. It was, therefore, submitted that the impugned judgment is legally sustainable and does not call for interference in the exercise of revisional jurisdiction.

9. Before considering the merits of the case, it is worthwhile to bear in mind that the scope of interference in a revision petition is limited. 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 or unreasonable, or suffers from non-consideration of relevant material or misappreciation 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 another view is possible.

10. 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."

11. Keeping in view the above principles and reverting to the facts of the present case, the specific case of the complainant is that he and the accused were acquainted with each other and, taking advantage of such acquaintance, the accused borrowed ₹90,000/- from him. According to the complainant, the cheque issued by the accused towards discharge of the said liability was dishonoured with the endorsement "account closed". The statutory notice issued by the complainant did not yield any result, and hence the complaint was filed.

12. In order to establish his case, the complainant was examined as PW1. During his examination, PW1 reiterated the averments contained in the complaint and narrated the transaction in detail. A conjoint reading of his oral testimony and the documentary evidence adduced on his side establishes that the statutory requirements for launching a prosecution under Section 138 of the N.I. Act were complied with. Significantly, the accused does not dispute the signature appearing on Ext.P1 cheque. His

case, instead, is that the cheque was issued to one Anil Kumar as security when he borrowed ₹5,000/- from him.

13. It is true that mere admission of the signature on a cheque does not, by itself, amount to an admission of liability or conclusively establish its execution. However, once the signature is admitted and the execution of the cheque is otherwise established, the statutory presumption under Section 139 of the N.I. Act comes into operation. In the present case, the evidence of PW1 regarding the execution of Ext.P1 cheque is convincing and reliable. Consequently, the presumption under Section 139 of the N.I. Act operates in favour of the complainant, and the burden shifts to the accused to rebut the same.

14. It is well settled that the accused is not required to adduce independent evidence to rebut the statutory presumption. The presumption can be rebutted by relying on the materials brought on record by the complainant or by demonstrating inherent improbabilities in the complainant's case. However, in the present case, no circumstance has been brought on record sufficient to probabilise the defence or create a reasonable doubt regarding the transaction alleged by the complainant.

15. As already stated, the defence of the accused is that Ext.P1

cheque was issued to one Anil as security when he borrowed ₹5,000/- from him. However, the accused did not examine the said Anil as a witness. It is also significant that, despite receiving the statutory notice demanding payment of the cheque amount, the accused did not send a reply within the relevant period and subsequently sent a reply, that too after institution of the complaint. Though the failure to send a reply by itself cannot be a ground to hold that the complainant's case is proved, it is nevertheless an additional circumstance to be considered while appreciating the defence.

16. The accused, in support of his defence, entered the witness box and was examined as DW1. He deposed in accordance with his defence that, in 1997, he had borrowed ₹5,000/- from Anil and had issued Ext.P1 cheque as security. According to him, although the amount was subsequently repaid, the cheque was not returned. He further stated that he had lodged a complaint before the police in 2000 and that Police Constables Rajeev and Pradeep had mediated the dispute. According to DW1, Ext.D1 is the receipt issued by the police in connection with the said complaint.

17. The said Police Constable named Rajeev was examined as DW2.

He deposed that, during 2000, he was working as a Police Constable at Aluva Police Station and that the accused and Anil had been called to the police station. However, he could not state the nature of the complaint or how the dispute was mediated. When Ext.D1 was shown to him, DW2 stated that he did not know in whose handwriting it was written and that he was seeing the said document for the first time. He was also unable to identify the signature appearing on Ext.D1, which did not bear the seal of the police station.

18. The Sub-Inspector of Police, Aluva Police Station, who was working there during the relevant period, was examined as DW3. Though he was called upon to produce the complaint relating to Ext.D1, he did not produce the same. He also deposed that he could not state who had issued Ext.D1 or on what basis it had been issued.

19. Thus, the accused primarily relied upon Ext.D1 to substantiate his defence. However, both the trial court and the appellate court concurrently found that Ext.D1 did not bear the official seal or proper signature of the Station House Officer. The appellate court also found that the evidence of DW1 to DW3 was insufficient to probabilise the defence that Ext.P1 cheque had been issued to Anil as security. Further, the trial

court had noticed that Ext.D1 appeared to contain writings in two different hands, along with interpolations and corrections.

20. On an independent consideration of the materials on record, I find no reason to interfere with the concurrent finding of the courts below that the accused failed to establish or even probabilise his defence. The evidence adduced by the accused is insufficient to rebut the statutory presumption operating in favour of the complainant.

21. No material has been placed before this Court to demonstrate that the appreciation of evidence by the trial court and the appellate court, or the concurrent findings of conviction recorded by them, suffer from any illegality, impropriety, perversity or jurisdictional error warranting interference in the exercise of revisional jurisdiction. Therefore, the conviction entered against the accused under Section 138 of the N.I. Act is liable to be confirmed.

22. However, considering the nature of the offence, the year of the alleged transaction and the other attending circumstances, I am of the view that the sentence imposed on the accused is on the higher side and warrants modification in the interests of justice.

In the result, this revision petition is allowed in part. The conviction of the accused for the offence punishable under Section 138 of the N.I. Act is confirmed. However, the sentence is modified as follows:

(i) The accused shall undergo imprisonment till the rising of the court and shall pay compensation of ₹90,000/- to the complainant under Section 357(3) of the Cr.P.C.

(ii) In default of payment of the compensation, the accused shall undergo simple imprisonment for one month.

(iii) If the revision petitioner/accused has already deposited any amount before the trial court pursuant to any direction issued by the appellate court or this Court, the said amount shall be treated as part of the compensation payable by him.

(iv) The revision petitioner/accused shall appear before the trial court on 30.11.2026 to undergo the modified sentence.

Sd/-

JOBIN SEBASTIAN
JUDGE

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