

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE V.RAMKUMAR**

**TUESDAY, THE 30TH NOVEMBER 2010 / 9TH AGRAHAYANA 1932**

**Crl.Rev.Pet.No. 3087 of 2010()**  
-----

**CRA.659/2008 of ADDL.SESIONS COURT-II, KOZHIKODE  
ST.1005/2007 of SPECIAL JUDICIAL 1ST CLASS MAGISTRATE COURT  
(MARAD CASES), KOZHIKODE**  
.....

**REVISION PETITIONER/APPELLANT/ACCUSED:**  
-----

**ABDUL NASER.K,AGED 38 YEARS,  
S/O.MUHAMMED,THAZHE KMOTTU ANNIPARAMBA,  
THIRUVANNUR NADA.P.O,KOZHIKODE.**

**BY ADV. SRI.T.G.RAJENDRAN**

**RESPONDENT(S): COMPLAINANT & STATE:**  
-----

**1. DHANESWARI CHITS PVT LTD,ROOM NO.C 23,  
3RD FLOOR,MALABAR GATE,RAM MOHAN ROAD,CALICUT-4,  
REP;BY ITS MANAGER,V.N.KUTTY,S/O.K.P.VASUDEVAN NAIR.**

**2. STATE OF KERALA REP:BY PUBLIC PROSECUTOR  
HIGH COURT OF KERALA,ERNAKULAM.**

**R1 BY ADV. SRI.CIBI THOMAS**

**R2 BY PUBLIC PROSECUTOR SRI. V.TEKCHAND**

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION  
ON 30/11/2010, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:**

**Kss**

**V.RAMKUMAR, J.**

-----  
**Crl.R.P.No. 3087 of 2010**  
-----

**Dated this the 30<sup>th</sup> day of November, 2010**

**ORDER**

In this Revision Petition filed under Section 397 read with Section 401 Cr.P.C. the petitioner who was the accused in S.T. No.1005 of 2007 on the file of the Judicial First Class Magistrate (Marad Cases), Kozhikode, challenges the conviction entered and the sentence passed against him for an offence punishable under Sec.138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act'). The cheque amount was ₹ 74,946/-. The fine/compensation ordered by the lower appellate court is ₹ 74946/-.

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision.

4. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant, that the complainant had validly complied with clauses (a) and (b) of the proviso to Section 138 of the 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. This Court sitting in the rarefied revisional jurisdiction will be loath to interfere with the findings of fact recorded by the Courts below concurrently. 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. What now survives for consideration is the legality of the sentence imposed on the revision petitioner. In the light of the decision of the Supreme Court in **Ettappadan Ahammedkutty v. E.P. Abdullakoya - 2008 (1) KLT 851** default sentence cannot be imposed for the enforcement of an order for compensation under Sec.357 (3) Cr.P.C. I am, therefore, inclined to modify the sentence to one of fine only. Accordingly, for the conviction under Section 138 of the Act the revision petitioner is sentenced to pay a fine of ₹ **69,946/-**

**(Rupees sixty nine thousand nine hundred and forty six only).** A sum of ₹15,000/- lying in deposit before the trial court pursuant to the orders of the first appellate court shall be refunded to the 1<sup>st</sup> respondent/complainant. The said fine shall be paid as compensation under Section 357 (1) Cr.P.C. The revision petitioner is permitted either to deposit the said fine amount before the Court below or directly pay the compensation to the complainant within one month from today and 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 aforementioned period he shall suffer simple imprisonment for three months by way of default sentence.

In the result, this Revision is disposed of confirming the conviction entered but modifying the sentence imposed on the revision petitioner.

Dated this the 30<sup>th</sup> day of November, 2010.

**V. RAMKUMAR, JUDGE.**