



IN THE HIGH Court OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

MONDAY, THE 18TH DAY OF MAY 2026 / 28TH VAISAKHA, 1948

CRL.REV.PET NO. 1038 OF 2018

ARISING FROM JUDGMENT DT.28.02.2018 IN CRL APPEAL NO.131/2016 ON THE FILES OF ADDL DISTRICT AND SESSIONS COURT VI, KOLLAM AND JUDGMENT DT.30.08.2016 IN ST 288/2014 ON THE FILES OF CJM,KOLLAM.

REVISION PETITIONER/APPELLANT/ACCUSED:

KANNAN
AGED 46 YEARS
S/O.LATE THANKAPPAN NADAR,
MANAGING DIRECTOR OF AA CASHEW COMPANY (NOW DEFUNCT) ,
SAYABI, KADAPPAKADA,
KOLLAM 691008.
NOW RESIDING AT GEETHIKA BHAVAN,
MUKHATHALA P.O. KOLLAM. ,
PIN - 691557

BY ADV SHRI.H.RAMANAN

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE :

- 1 M/S.ADISIVA ENTERPRISES
KALLUMTHAZHAM.P.O. ,
KOLLAM 691004 REPRESENTED BY ITS PROPRIETOR,
PRATHAPACHANDRAN R.K. ,
PATTATHANAM P.O. ,
KOLLAM. , PIN - 691021
- 2 STATE OF KERALA
REP. BY PUBLIC PROSECUTOR,
HIGH Court OF KERALA,
ERNAKULAM, KOCHI. ,



PIN - 682031

BY ADVS.

SHRI.B.MOHANLAL

SHRI.BIJU GEORGE

SMT. ANIMA M. PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 07.04.2026, THE COURT ON 18.05.2026 PASSED THE
FOLLOWING:

**"CR"****ORDER**

The concurrent verdicts of convictions recorded and sentence awarded by the Chief Judicial Magistrate Court, Kollam and the Additional Sessions Court-VI, Kollam in S.T No.288/2014 and Crl.A No.131/2016 respectively, in connection with the commission of offence under Section 138 of the Negotiable Instruments Act (for short 'the N.I Act') by the petitioner herein, are under challenge in this revision petition.

2. The case relates to the dishonour of two cheques dated 24.02.2014 for the amounts Rs.19,75,000/- and Rs.10,00,000/- issued by the petitioner to the complainant/first respondent. The Trial Court relied on the evidence tendered by the complainant as PW1 and the documents marked as Exts.P1 to P9 from the part of the complainant, and the third party document marked as Ext.X1, to arrive at the conclusion that the petitioner committed the offence punishable under Section 138 of the N.I Act. Accordingly, the petitioner, who represented the first accused company, was sentenced by the learned Magistrate to undergo simple imprisonment for six months, and to pay a sum of



Rs.29,50,000/- as compensation to the complainant under Section 357(3) Cr.P.C. A default clause of simple imprisonment for a further period of four months was prescribed for non payment of compensation. Though the aforesaid verdict was challenged in appeal by the petitioner and the first accused company, the learned Additional Sessions Judge concurred with the findings of the learned Magistrate and dismissed the appeal confirming the conviction recorded and sentence awarded by the Trial Court. Aggrieved by the above concurrent verdicts of the Courts below, the petitioner is here before this Court with this revision petition.

3. Heard the learned counsel for the revision petitioner, the learned counsel for the first respondent, and the learned Public Prosecutor representing the State of Kerala.

4. The Trial Court as well as the Appellate Court had made detailed evaluation of the evidence on record, and arrived at the conclusion that the complainant has successfully established that the petitioner/second accused, along with the first accused company, had committed the offence under Section 138 of the N.I Act in connection with the dishonour of the cheques, which were marked as Exts.P1 and



P1(a) before the Trial Court. The contentions raised by the petitioner about the absence of liability to pay the amounts mentioned in the aforesaid cheques, and the issuance of the aforesaid cheques as signed blank cheques, were rightly repelled by the Courts below, after embarking upon a detailed ratiocination of the evidence on record. Therefore, there is absolutely no scope for a further adjudication on the above aspects in this proceedings of revision.

5. Upon the question of law, the learned counsel for the revision petitioner argued that the entire criminal prosecution launched against the revision petitioner is legally unsustainable since the power of attorney holder of the complainant, who had filed the complaint before the learned Magistrate, had not stated anywhere in the complaint that she was having direct personal knowledge about the transactions between the complainant and the accused, which resulted in the commission of the offence alleged in the complaint. It is thus argued that, in the absence of any such pleadings pertaining to the personal knowledge of the power of attorney holder about the cause of action leading to the complaint, the learned Magistrate ought not have taken cognizance of the offence and issued summons to the



accused. The law laid down by the Hon'ble Supreme Court in **M/s.Naresh Potteries v. M/s.Aarti Industries and Another [2025(1) SCR 40]** and **Narayanan.A.C and Another v. State of Maharashtra and Others [(2015) 12 SCC 203]** are relied on by the learned counsel for the revision petitioner in support of the above argument.

6. At the outset it has to be stated that there is marked difference in the factual scenario of **Naresh Potteries and Narayanan A.C.**(supra), in which the Hon'ble Supreme Court emphasized need to plead the direct personal knowledge of the Power of Attorney holder of complainant about the transactions which resulted in the complaint, from the factual scenario of this case. In **Naresh Potteries and Narayanan A.C.**(supra) the orders of the Magistrate issuing process against the accused were challenged shortly after the Magistrate took the complaint filed by the Power of Attorney holder to files and issued summons to the accused. There was no such prompt challenge in the case on hand. That apart, in the instant case, it is the original complainant himself who adduced evidence during the course trial of the case. Thus the ratio in **Naresh Potteries and**



Narayanan A.C.(supra) have been laid at the initial stages of the respective cases, and not after the inaction of the accused paving the way for the original complainant to adduce evidence in the trial about the transactions which led to the offence. Thus the dictum laid down by the Hon'ble Apex Court in the aforesaid decisions has no applicability in the present case.

7. It is true that, in the complaint filed before the Trial Court by the power of attorney holder of the complainant (wife of the proprietor of the complainant firm), it is not stated that she was having direct personal knowledge about the transactions which resulted in the commission of the crime alleged in the complaint. However, at the stage of trial, the complainant himself had appeared before the Trial Court and adduced evidence as PW1 about the transactions alleged in the complaint, which gave rise to the offence under Section 138 of the N.I Act. It is by relying on the aforesaid evidence that the Trial Court and the Appellate Court found the petitioner guilty of the offence under Section 138 of the N.I Act, and resorted to the conviction and sentence. Now, the question to be looked into is, whether the aforesaid conviction and sentence are liable to be reversed in this



revision proceedings for the reason that the learned Magistrate had taken cognizance of the offence, in the absence of a specific plea in the complaint filed by the power of attorney holder of the complainant that she was having direct personal knowledge of the transactions leading to the offence alleged in the complaint. In this context, it is worth to have reference to the provisions contained in Section 465 of the Code of Criminal Procedure.

8. Section 465 of the Code of Criminal Procedure reads as follows:

"465. Finding or sentence when reversible by reason of error, omission or irregularity.—(1) *Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation of revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.*

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned



a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.”

9. It is clear from the aforesaid provision of law that in the present case, the findings of conviction and sentence of the Trial Court, which were upheld by the Appellate Court, are not liable to be reversed in this revision proceedings unless it is shown that a failure of justice has, in fact, been occasioned due to the act of the learned Magistrate taking cognizance of the offence upon the complaint filed by the power of attorney holder of the complainant. Going by the provisions contained in sub Section (2) of Section 465 Cr.P.C, in determining whether a failure of justice has occasioned, this Court shall have regard to the fact whether the objection raised by the revision petitioner regarding the non-competence of the power of attorney holder to institute the complaint, was raised at an earlier stage in the proceedings. As far as the present case is concerned, the petitioner did not care to object the order of the learned Magistrate taking cognizance of the offence, on the basis of the complaint filed by the power of attorney holder of the complainant, before the commencement of the trial. Thus, the point to be looked into is



whether the aforesaid aspect could be taken into account by this Court in this revision proceedings, to overturn the findings of the Courts below.

10. The legal aspect pertaining to the parameters to be looked into, to ascertain whether the error, omission or irregularity in any proceedings had occasioned a failure of justice, has been dealt with by the Hon'ble Supreme Court in **State of Karnataka Lok Ayukta Police v. Subbegowda [(2023) 17 SCC 699]** as follows:

"13. In State of M.P. vs. Bhooraji and Others, 2001 (7) SCC 679, this Court had an occasion to deal with the various aspects contained in S.465 of CrPC more particularly to deal with the expression "A failure of justice has in fact been occasioned" as contained therein. Since, the provisions contained in S.19(3) of the Prevention of Corruption Act and in S.465(1) of CrPC are pari materia, the observations made in the said decision would be relevant.

"14. We have to examine S.465(1) of the Code in the above context. It is extracted below:

"465. (1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the



opinion of that Court, a failure of justice has in fact been occasioned thereby."

15. A reading of the section makes it clear that the error, omission or irregularity in the proceedings held before or during the trial or in any enquiry were reckoned by the legislature as possible occurrences in criminal Courts. Yet the legislature disfavoured axing down the proceedings or to direct repetition of the whole proceedings afresh. Hence, the legislature imposed a prohibition that unless such error, omission or irregularity has occasioned "a failure of justice" the superior Court shall not quash the proceedings merely on the ground of such error, omission or irregularity.

16. What is meant by "a failure of justice" occasioned on account of such error, omission or irregularity? This Court has observed in Shamnsaheb M. Multtani v. State of Karnataka [2001 (2) SCC 577: 2001 SCC (Cri) 358] thus: (SCC p. 585, para 23)

"23. We often hear about 'failure of justice' and quite often the submission in a criminal Court is accentuated with the said expression. Perhaps it is too pliable or facile an expression which could be fitted in any situation of a case. The expression 'failure of justice' would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Diplock in Town Investments Ltd. v. Deptt. of the Environment [(1977) 1 All ER 813 : 1978 AC 359 : (1977) 2 WLR 450 (HL)]). The criminal Court, particularly the superior Court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage."

11. As far as the present case is concerned, it is not possible to say that the act of the learned Magistrate, taking cognizance of the



offence on the basis of the complaint filed by the power of attorney holder of the complainant, had resulted in the failure of justice. This is especially so in view of the fact that the complainant himself had adduced evidence at the stage of trial, and the petitioner exercised his right to cross-examine the complainant on all aspects relating to the averments in the complaint. It is also pertinent to note that, the petitioner did not avail the remedy to challenge the order of the learned Magistrate taking cognizance of the complaint filed by the power of attorney holder, by taking recourse to appropriate procedures before this Court. In the above circumstances, the verdicts rendered by the Trial Court and the Appellate Court are not liable to be overturned in this revision proceedings due to the irregularity pertaining to the absence of specific contentions in the complaint about the direct personal knowledge of the power of attorney holder about the transactions which resulted in the offence.

12. As regards the sentence awarded by the Courts below, it has to be stated that the sentence of simple imprisonment for six months is liable to be reduced to imprisonment till the rising of Court, having regard to the nature and gravity of the offence involved in this



case. Subject to the above modification of the sentence, the verdicts rendered by the Courts below, are liable to be upheld.

In the result, the revision petition stands disposed of as follows:

i) The concurrent verdicts of the Courts below, convicting and sentencing the petitioner for the commission of offence under Section 138 of the N.I Act, are hereby upheld, except for the portion of the sentence prescribing simple imprisonment for six months.

ii) Instead of simple imprisonment for six months, the petitioner is sentenced to undergo imprisonment till the rising of the Court.

iii) The other directions of the Courts below pertaining to payment of compensation, and the default clause for non-payment of compensation amount, are retained as such.

The Registry shall transmit a copy of this order, along with the case records, to the Trial Court for enforcement of the revised sentence awarded by this Court.

(Sd/-)

G. GIRISH, JUDGE