

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN
WEDNESDAY, THE 28TH DAY OF JANUARY 2026 / 8TH MAGHA, 1947
CRL.REV.PET NO. 541 OF 2017
AGAINST THE JUDGMENT DATED 13.04.2012 IN CC NO.2764 OF 2001 OF
JUDICIAL MAGISTRATE OF FIRST CLASS -II, ERNAKULAM ARISING OUT OF THE
JUDGMENT DATED 28.02.2017 IN Crl.A NO.360 OF 2012 OF ADDITIONAL SESSIONS JUDGE,
ERNAKULAM

REVISION PETITIONERS/APPELLANTS/ACCUSED NOS.1 TO 3:

- 1 PATTASSERIL PRIVATE LTD
PATTASSERIL, 22/6A/2, VAIKOM ROAD, TRIPUNITHURA.
- 2 ANTYAMMA RAVINDHAR
W/O. RAVINDHAR @ THAMBI ELIAS, DIRECTOR, PATTASSERI PRIVATE
LIMITED, 22/6A/2, VAIKOM ROAD, TRIPUNITHURA.
- 3 SUSAN JIMMY
W/O.JIMMY ELIAS, DIRECTOR, PATTASSERI PRIVATE LIMITED, 22/6A/2,
VAIKOM ROAD, TRIPUNITHURA.

BY ADV SHRI.VARGHESE C.KURIAKOSE

RESPONDENTS/RESPONDENTS/STATE & COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.
- 2 THE ASSOCIATED CEMENT COMPANIES LIMITED
ZONAL OFFICE, 4/880-D2, 2ND FLOOR, GOLDEN PLAZA, CHITTOOR ROAD,
KOCHI-18, REPRESENTED BY ITS POWER OF ATTORNEY HOLDER AND
SENIOR MANAGER, JAYANTHI VIJAYA BHASKARA SASTHRI.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
28.01.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**CR****P.V. BALAKRISHNAN, J.****.....
Crl.R.P.No.541 of 2017****.....
Dated this the 28th day of January, 2026****ORDER**

Under challenge in this revision petition is the conviction and sentence rendered against the revision petitioners under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'NI Act' for short).

2. The revision petitioners are the accused Nos.1 to 3 respectively, in CC No.2764 of 2001 on the files of the Judicial First Class Magistrate Court -II, Ernakulam. They stood trial before that court for committing an offence punishable under Section 138 of NI Act.

3. The complainant is a company engaged in the manufacturing and sale of cement. The 1st accused is a private limited company, and the 2nd and 3rd accused are the directors of the 1st accused. The 1st accused purchased cement from the complainant company and, in discharge of the said liability, issued Ext.P2 cheque dated 21.08.2001 for Rs.8,71,695/- drawn on Canara Bank, Kadavanthra Branch. But when the cheque was



presented for collection, it got dishonored for the reason that funds are insufficient. The statutory notice issued also did not evoke any response. Hence, the complainant approached the trial court by filing the afore complaint.

4. The trial court, on an appreciation of the evidence on record, found the accused guilty and convicted them under Section 138 of the NI Act. It sentenced the 1st accused to pay a fine of Rs.5,000/- and the 2nd and 3rd accused to undergo simple imprisonment for a period of three months under Section 138 of the NI Act. It also ordered the 2nd and 3rd accused to pay a sum of Rs.8,00,000/- each to the complainant as compensation under Section 357(3) Cr.P.C., with a default clause.

5. The accused carried the matter in appeal by filing Crl.Appl.No.360 of 2012 before the Additional Sessions Court-VIII, Ernakulam. The said court by judgment dated 28.02.2017, dismissed the appeal.

6. Heard, Adv. Varghese C. Kuriakose, the learned counsel for the revision petitioners. There is no representation for the 2nd respondent. Perused the records.

7. The learned counsel for the revision petitioners submitted that both the trial court and the appellate court did



not consider the materials on record, including the evidence adduced, in a proper perspective and has arrived at a wrong conclusion of guilt against the revision petitioners. He submitted that the complaint was filed through a power of attorney holder, and the power of attorney has not been produced before the trial court. He also submitted that the person who filed the complaint had no direct knowledge regarding the transactions and execution of the cheque. He contended that none of the witnesses examined from the side of the complainant had any direct knowledge regarding the transactions or the issuance of the cheque, and therefore, even the initial onus cast on the complainant, to prove the execution of the cheque has not been discharged.

8. On an anxious consideration of the submissions made by the learned counsel for the revision petitioners, and the materials on record, I am of the view that there is some merit in it. It is to be seen that the complaint has been filed on behalf of the complainant by a person named Mr. Jayanthi Vijaya Bhaskara Sasthri, claiming to be the attorney holder of the complainant. But it is to be taken note that there is no specific averment in the complaint that he had witnessed the transactions as an agent



of the company or that he is having knowledge regarding the transactions and the execution of the cheque. It is also to be taken note that the complainant has not produced the power of attorney authorising Mr. Jayanthi Vijaya Bhaskara Sasthri, to file the complaint, and prosecute it before the trial court. Further, it is pertinent to note that the said Mr. Jayanthi Vijaya Bhaskara Sasthri when examined as DW2, categorically stated that he is not fully aware of the transactions in this case and that he cannot identify the hand writing of person who had executed Ext.P2 cheque. He further stated that it is as per the information gathered from the documents he is giving evidence.

9. Be that as it may, the materials on record shows that, in order to prove the case of the complainant, PW1 and PW2 have been examined and Exts. P1 to P10 documents have been marked. Among the said witnesses, PW1 is the marketing manager and power of attorney holder of the complainant and PW2 is the deputy manager of accounts of the complainant. The evidence of PW1 categorically shows that he does not have direct knowledge regarding the transactions relating to the issuance of the cheque. His proof affidavit shows that he became conversant with the facts of the case only by going through the



documents and records kept in the custody of the company, and nothing more. Similarly, the evidence of PW2, shows that he has not deposed anything about the execution or issuance of the cheque.

10. The company, being a juristic person, cannot act on its own and it must necessarily function through a human agency. A company is competent to initiate proceedings under Section 138 of NI Act and it can do so, through an authorised person. Even though, a power of attorney holder, being an authorised representative of the company, can file a complaint and give evidence, he must have either witnessed the transaction or must possess direct knowledge of the transaction. A person, who only became associated with the company after the transaction and who relies purely on records, cannot prove the execution of the cheque or the transaction. It is to be kept in mind that merely because the complainant is a juristic entity, it will not dilute the rigour of proof required for proving the execution of the cheque and the execution cannot be presumed merely on the production of a cheque. It must be proved either by the admission of the accused or the evidence of a competent witness, who had seen the execution. A witness, who is totally



unaware as to how, when and why the cheque was issued cannot prove the execution by merely producing records or by giving evidence through information gathered from the records available. The presumptions under Sections 118 and 139 of the NI Act will arise only after the execution of the cheque is proved and if the complainant's witness has no direct knowledge or did not witness the execution, the prosecution will fail at the threshold itself and there will be no burden upon the accused to rebut anything. (See **Naryanan A.C. and another v. State of Maharashtra and Others** [2013 (3) KHC 885] and **Padma Conductors Pvt. Ltd. v. MIRC Electronics** [2024 (1) KHC 531].

11. In the instant case, as stated earlier, it can be seen that there is no substantive evidence at all to prove the issuance and execution of the cheque by the accused to the complainant. This in turn means that the complainant has even failed to discharge the initial burden cast upon it to prove the execution and issuance of the cheque. Both the trial court and the appellate court have erred in appreciating the materials and evidence on record in a proper perspective and has missed these relevant points, while arriving at a wrong conclusion of guilt against the revision petitioners. Hence, this revision petition is



only liable to be allowed, thereby setting aside the conviction and sentence passed against the revision petitioners.

In the result, this Criminal Revision Petition is allowed as follows:

The conviction and sentence rendered against the revision petitioners/accused Nos. 1 to 3 under Section 138 of the NI Act in C.C.No.2764 of 2001 by the Judicial First Class Magistrate Court-II, Ernakulam, and as confirmed in Crl.A.No.360 of 2012 by the Additional Sessions Court-VIII, Ernakulam, are set aside, and the revision petitioners/accused Nos. 1 to 3 are set at liberty.

Sd/-
P.V. BALAKRISHNAN,
JUDGE

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