

Crl.R.P.Nos.58 of 2026 &  
Cr. R.P. [Filing No.48 of 2026]



2026:KER:12589

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

WEDNESDAY, THE 11<sup>TH</sup> DAY OF FEBRUARY 2026 / 22ND MAGHA,

1947

CRL.REV.PET NO. 58 OF 2026

AGAINST THE JUDGMENT DATED 16.10.2025 IN Crl.A  
NO.94 OF 2022 OF ADDITIONAL DISTRICT & SESSIONS  
COURT/RENT CONTROL APPELLATE AUTHORITY, MUVATTUPUZHA  
ARISING OUT OF THE JUDGMENT DATED 26.02.2022 IN ST NO.999  
OF 2018 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, PIRAVOM

REVISION PETITIONER/S:

LIJI  
AGED 46 YEARS  
KUDILIL HOUSE, CHETHICODE P.O, EDAKATTUVAYAL  
VILLAGE, ERNAKULAM-, PIN - 682315

BY ADVS.  
SHRI.ABHIRAM T.K.  
SHRI.ARUN GEORGE.D  
SHRI.S.KRISHNA KUMAR

RESPONDENT/S:

1 STATE OF KERALA

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REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA ERNAKULAM -, PIN - 682031

2      SOMY KURIAKOSE  
         AGED 33 YEARS  
         KANDAMCHALIL HOUSE, NEDUMKANDAM, KALKOONTHAL  
         VILLAGE, UDUMBANCHOLA, IDUKKI-, PIN - 685553

OTHER PRESENT:

ADV EC BINEESH PP

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR  
ADMISSION ON 11.02.2026, ALONG WITH Cr. R.P, [Filing  
No.48 of 2026], THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

Crl.R.P.Nos.58 of 2026 &  
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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

WEDNESDAY, THE 11<sup>TH</sup> DAY OF FEBRUARY 2026 / 22ND MAGHA,

1947

Crl.R.P. of 2026 [F.No.48 of 2026]

AGAINST THE JUDGMENT DATED 16.10.2025 IN Crl.A  
NO.93 OF 2022 OF ADDITIONAL DISTRICT & SESSIONS  
COURT/RENT CONTROL APPELLATE AUTHORITY, MUVATTUPUZHA  
ARISING OUT OF THE JUDGMENT DATED 26.02.2022 IN ST NO.803  
OF 2018 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, PIRAVOM

PETITIONER/S:

LIJI,  
AGED 46 YEARS  
KUDILIL HOUSE, CHETHICODE P.O, EDAKKATTUVAYAL  
VILLAGE, ERNAKULAM-, PIN - 682315

BY ADVS.  
SHRI.ABHIRAM T.K.  
SHRI.S.KRISHNA KUMAR  
SHRI.ARUN GEORGE.D

RESPONDENT/S:

Crl.R.P.Nos.58 of 2026 &  
Cr. R.P. [Filing No.48 of 2026]

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STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA ERNAKULAM -, PIN - 682031

THIS HAVING COME UP FOR ADMISSION ON 11.02.2026,  
ALONG WITH Crl.Rev.Pet.58/2026, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

Crl.R.P.Nos.58 of 2026 &  
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**“C.R.”**

**K.BABU, J.**

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**Crl.R.P.No.58 of 2026**  
**&**  
**Unnumbered Crl.R.P. of 2026 [F.No.48 of 2026]**  
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Dated this the 11<sup>th</sup> day of February, 2026

**COMMON ORDER**

The petitioner in these Criminal Revision Petitions is the same person. She filed two complaints as ST Nos.999/2018 and 803/2018 before the Judicial First Class Magistrate Court, Piravam under Section 200 of the Cr.PC r/w Sections 142 and 143 of the Negotiable Instruments Act, 1881 (for short 'the NI Act') alleging offence punishable under Section 138 of the NI Act against the party respondents/accused. The trial Court convicted the accused and sentenced them under Section 138 of the NI Act. The accused/party respondents filed Crl.Appeal Nos. 94 of 2022 and 93 of 2022 before the

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Additional District and Sessions Court, Muvattupuzha. The Sessions Court acquitted the accused in both the cases. The petitioner challenges the judgment acquitting the accused in the above cases in these revision petitions. She challenges the judgment of acquittal in ST No.999 of 2018 in Crl.R.P.No.58 of 2026 and the acquittal in ST No.803 of 2018 in the Unnumbered Crl Revision Petition [Filing No.48 of 2026]. When the revision petition challenging the judgment of acquittal in ST No.803 of 2018 was filed, the Registry noted the following defect:-

“Whether Criminal Revision Petition is the proper remedy”.

2. Heard the learned counsel for the revision petitioner.

3. The short question that arises for consideration is whether a Criminal Revision Petition under Section 397 r/w Section 401 of the Cr.PC is maintainable against a judgment of acquittal passed in a complaint case.

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4. Sub-section (4) of Section 401 Cr.PC reads thus:-

**“401. High Court's powers of revision.—(1)**

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(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.”

5. As per sub-section (4) of Section 401 revision against appealable order/judgment is not maintainable.

6. Therefore, the issue that arises for consideration is whether the judgment of acquittal in a complaint case alleging offence under Section 138 of NI Act is appealable at the instance of the complainant.

7. Chapter XXIX of the Cr.PC deals with appeals. Section 372 of Cr.PC mandates that no appeal shall lie from any judgment or order of a criminal court except as provided for by the Cr.PC itself or by any other law for the time being in force. By Act 5 of 2009, a proviso was

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introduced to Section 372 whereby a limited right of appeal has been conferred upon the victim of an offence. As per the proviso a victim shall have a right to prefer an appeal against

- (1) any order passed by the Court acquitting the accused or
- (2) convicting for a lesser offence or
- (3) imposing inadequate compensation.

8. Such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

9. Section 378 of Cr.PC deals with appeal in case of acquittal. Sub-sections (4) and (5) of Section 378 contains the limitations in presenting such appeal against acquittal to the High Court. As per sub-section (4), if an order of acquittal is passed in any case instituted upon a complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave



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to appeal from the order of acquittal, the complainant may present such an appeal to the High Court. An application seeking leave under sub-section (4) shall not be entertained by the High Court after the expiry of six months where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

10. Before the amendment in Section 372 of the Code of Criminal Procedure by Act 5 of 2009, the remedy of a complainant to challenge a judgment of acquittal was to prefer an appeal as provided in sub-section (4) of Section 378 Cr.PC. By way of the amendment, the above referred proviso was added to Section 372 conferring the 'victim' of a crime the right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation.

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11. Sub-section (4) of Section 378 confers on the complainant the right to prefer an appeal after obtaining special leave to appeal.

12. The term complainant is not defined in the Code. 'Complaint' is defined in Section 2(d) of the Cr.PC which reads thus:-

“(d) “complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report”.

13. Subsequent to the amendment to Section 372, the definition of the word 'victim' was introduced as Section 2(wa) which reads thus:-

“(wa) “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir;”

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14. As per Section 142 of the NI Act, no Court shall take cognizance of any offence punishable under 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque. Undoubtedly a complainant under Section 138 of the NI Act is a victim as defined in Section 2(wa) of the Cr.PC as the expression 'victim' includes not only the person who has suffered any loss or injury caused by reason of any act or omission for which the accused person has been charged, but also includes his or her guardian or legal heir.

15. The Apex Court in ***Celestium Financial (M/s) v. A. Gnanasekaran*** [2025 (4) KHC 189] considered this question and held that in the case of an offence alleged against an accused under S.138 of the Act, the complainant is indeed the victim owing to the alleged dishonour of a cheque. Therefore, the complainant in a private complaint alleging offence under Section 138 of

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the NI Act can proceed to prefer an appeal as provided in the proviso to Section 372 Cr.PC.provided the circumstances which enable such victim to file an appeal are met.

16. In ***Celestium Financial (M/s) v. A. Gnanasekaran***, the Supreme Court held that unlike subsection (4) of Section 378, the right of a victim to file an appeal is not circumscribed by any condition as such, so long as the appeal can be premised in accordance with proviso to S.372. The Supreme Court observed that the status of the victim under Section 2(wa) may slightly vary from the complainant in a complaint defined in Section 2(d) and referred to in Section 378 of the Cr.PC. The Supreme Court observed that when an appeal is to be preferred by a complainant, the essential question is, whether the complainant is also the 'victim' or only an 'informant'. The Apex Court held that if the complainant is not a victim and the case is instituted upon a complaint,

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then sub-section (4) requires that the complainant must seek special leave to appeal from an order of acquittal from the High Court. The Hon'ble Apex Court further held that if the complainant is also a victim, he could proceed under the proviso to S.372, in which case the rigour of sub-section (4) of S.378, which mandates obtaining special leave to appeal, would not arise at all, as he can prefer an appeal as a victim and as a matter of right.

17. In ***Celestium Financial (M/s) v. A. Gnanasekaran***, the Apex Court concludes thus:-

“If a victim who is a complainant, proceeds under S.378, the necessity of seeking special leave to appeal would arise, but if a victim whether he is a complainant or not, files an appeal in terms of proviso to S.372, then the mandate of seeking special leave to appeal would not arise.”

18. The Apex Court elaborated the reasons for this distinction as follows:-

“*Firstly*, the victim of a crime must have an absolute right to prefer an appeal which cannot be circumscribed

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by any condition precedent. In the instant case, a victim under S.138 of the Act, i.e., a payee or the holder of a cheque is a person who has suffered the impact of the offence committed by a person who is charged of the offence, namely, the accused, whose cheque has been dishonoured.

*Secondly*, the right of a victim of a crime must be placed on par with the right of an accused who has suffered a conviction, who, as a matter of right can prefer an appeal under S.374 of the CrPC. A person convicted of a crime has the right to prefer an appeal under S.374 as a matter of right and not being subjected to any conditions. Similarly, a victim of a crime, whatever be the nature of the crime, unconditionally must have a right to prefer an appeal.

*Thirdly*, it is for this reason that the Parliament thought it fit to insert the proviso to S.372 without mandating any condition precedent to be fulfilled by the victim of an offence, which expression also includes the legal representatives of a deceased victim who can prefer an appeal. On the contrary, as against an order of acquittal, the State, through the Public Prosecutor can prefer an appeal even if the complainant does not prefer such an appeal, though of course such an appeal is with the leave of the court. However, it is not always necessary for the State or a complainant to prefer an appeal. But when it comes to a victim's right to prefer an appeal, the

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insistence on seeking special leave to appeal from the High Court under S.378(4) of the CrPC would be contrary to what has been intended by the Parliament by insertion of the proviso to S.372 of the CrPC. *Fourthly*, the Parliament has not amended S.378 to circumscribe the victim's right to prefer an appeal just as it has with regard to a complainant or the State filing an appeal. On the other hand, the Parliament has inserted the proviso to S.372 so as to envisage a superior right for the victim of an offence to prefer an appeal on the grounds mentioned therein as compared to a complainant.

*Fifthly*, the involvement of the State in respect of an offence under S.138 of the Act is conspicuous by its absence. This is because the complaint filed under that provision is in the nature of a private complaint as per S.200 of the CrPC and S.143 of the Act by an express intention incorporates the provisions of the CrPC in the matter of trial of such a deemed offence tried as a criminal offence. Therefore, the complainant, who is the victim of a dishonour of cheque must be construed to be victim in terms of the proviso to S.372 read with the definition of victim under S.2(wa) of the CrPC. “

19.. The Hon'ble Supreme Court made it clear that if the victim of an offence who may or may not be the

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complainant proceeds under the proviso to Section 372 of the Cr.PC, then such a victim need not seek special leave to appeal from the High Court. A person who is a complainant under S.200 of the CrPC who complains about an offence under S.138 of the NI Act has the right to prefer an appeal as a victim under the proviso to S.372 of the CrPC and he need not invoke sub-section (4) of Section 378.

20. The result of the above discussion is that a person who files a complaint alleging offence under Section 138 of the NI Act has the right to prefer appeal under Section 378 or proviso to Section 372 of Cr.PC [Section 419 and proviso to Section 413 of the BNSS].

Since an appeal lies under the Code or the Sanhita, no proceeding by way of revision shall be entertained at the instance of the party who could have filed the appeal. Therefore, the revision petitions are not maintainable. Resultantly, the Revision Petitions stand rejected. The



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Revision petitioner is at liberty to prefer appeal as provided in the Code/Sanhita. It is made clear that the period during which the revision petitions remained on the file of this Court shall be excluded while reckoning the period of limitation for preferring appeal.

Sd/-  
**K.BABU,**  
**JUDGE**

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APPENDIX OF CRL.REV.PET NO. 58 OF 2026

**PETITIONER ANNEXURES**

**Annexure A1**

**CERTIFIED COPY OF THE ORDER PASSED BY  
THE HON'BLE ADDITIONAL DISTRICT AND  
SESSIONS COURT MUVATTUPUZH IN CRL.M.P  
NO. 36/2022 DATED 22.04.2025**

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APPENDIX OF NO. OF Cr. R.P, [Filing No.48 of 2026]

PETITIONER ANNEXURES

Annexure A1

CERTIFIED COPY OF THE ORDER PASSED BY  
THE HON'BLE ADDITIONAL DISTRICT AND  
SESSIONS COURT MUVTTUPUZHA IN CRIL.M.P  
NO 35/2022 DATED 22.04.2025