

**(2012) 02 KL CK 0161**

**In the High Court Of Kerala**

**Case No :** Criminal Rev. Petition No. 493 of 2012 (B)

Vinod S. Nair

APPELLANT

Vs

A.S. Ajithkumar and The State of Kerala

RESPONDENT

**Date of Decision :** 29-02-2012

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313, 357(3)  
Negotiable Instruments Act, 1881 (NI) — Section 138

**Citation :** (2012) 02 KL CK 0161

**Hon'ble Judges :** P. Bhavadasan, J

**Bench :** Single Bench

**Advocate :** C.A. Chacko and Smt. C.M. Charisma By, for the Appellant; S. Manu By R1, Smt. K. Deepa (Payyanur) By R1 and Sri. T.R. Rajesh, Public Prosecutor By R2, for the Respondent

## Judgement

Justice P. Bhavadasan

1. The accused was prosecuted for the offence punishable u/s 138 of the Negotiable Instruments Act. He was found guilty. He was therefore convicted and sentenced to suffer simple imprisonment for a period of one month and was directed to pay a sum of Rs. 1,70,000/- as compensation to the complainant u/s 357(3) of Cr.P.C, with a default clause of simple imprisonment for a period of one month. In appeal, the lower appellate court confirmed the conviction and but modified the sentence as one to undergo simple imprisonment till the rising of the court and to pay fine of Rs. 1,50,000/-, with a default clause of simple imprisonment for a period of two months. It was also directed that if the fine amount was realized, the same should be given as compensation to the complainant.

2. According to the complainant, in order to discharge a liability due to him, the accused issued Ext.P2 cheque which on presentation bounced for want of funds in the account of the accused. A statutory notice issued to the accused neither invoked any reply nor was the amount paid. Hence the complaint.

3. Cognizance of the offence was taken. On appearance of the accused, all formalities were complied with. Particulars of the offence were read out to him, to which he pleaded not guilty and claimed to be tried. The complainant therefore examined himself as PW1 and had Exts.P1 to P7 marked. After the close of the complainant's evidence, the accused was questioned u/s 313 Cr.P.C. He denied all the incriminating circumstance brought out against him in the evidence, but he chose to adduce no evidence in support of his defence. Both the courts below, on a consideration of the evidence before it, came to the conclusion that the offence had been made out and accordingly convicted and sentenced by the trial court. Sentence was modified by the lower appellate court as already mentioned.

4. When this revision petition came up for admission today, the Learned Counsel appearing for the revision petitioner pointed out that the revision petitioner does not wish to address this Court on the merits of the case and only prays for some time to pay the fine amount as ordered by the lower appellate court.

5. The Learned Counsel for the respondent pointed out that there is considerable delay in filing this revision petition and under those circumstances there is no leniency is warranted.

6. However in order to ensure that there is no illegality, irregularity or impropriety in the findings of the courts below, this Court carefully perused the judgments of the courts below and heard both sides.

7. Both the courts considered the evidence in considerable detail and came to the conclusion that the offence had been made out. It is seen that the accused did not adduce specific evidence from his part in support of his defence and had given only a suggestion that he had borrowed a sum of Rs. 50,000/-from the complainant. No evidence was adduced by the accused at all. There is no suggestion by PW1 that the particulars of the cheque was filled up by the complainant or by somebody else at his behest. Added to the above facts, on getting the statutory notice he failed to respond to the same. If he had a case that he did not owe the amount as alleged by the complainant or that the cheque has not been issued, he should have immediately responded. His passive attitude goes a long way in showing his culpability.

8. It was the above facts and circumstances that persuaded the courts below to come to the conclusion that the accused was guilty of the offence alleged against him. He was rightly found guilty and convicted and sentenced for the offence.

Now, coming to the prayer made by the Learned Counsel for the revision petitioner regarding the grant of time for payment of fine amount as ordered by the lower appellate court, it is true that a long period has already elapsed. However, considering the fact that the petitioner has expressed his readiness and willingness to pay the amount, it is felt that a short time can be granted to the revision petitioner to pay the amount.

9. In the result, while confirming the conviction of the accused for the offence punishable u/s 138 of Negotiable Instruments Act and confirming the sentence imposed by the lower appellate court the revision petitioner is granted four months time from today to pay the fine amount as ordered by the lower appellate court, failing which the default clause imposed by the lower appellate court shall take effect. It is also directed that if the fine amount is realized the same shall be given as compensation to the complainant.