



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

FRIDAY, THE 23RD DAY OF JANUARY 2026 / 3RD MAGHA, 1947

CRL.REV.PET NO. 92 OF 2019

AGAINST THE JUDGMENT IN CrI.A NO.183 OF 2017 OF IV
ADDITIONAL SESSIONS COURT, ERNAKULAM ARISING OUT OF THE
JUDGMENT IN ST NO.5589 OF 2011 OF JUDICIAL MAGISTRATE OF FIRST
CLASS -III, ERNAKULAM

REVISION PETITIONER/APPELLANT/2ND ACCUSED:

V.J.JOSEPH,
FORMER MANAGING DIRECTOR, J & A FOUNDATION PVT LTD.,
(NOW UNDER LIQUIDATION) RESIDING AT VILANGUPARA
HOUSE, GEETHANJALI ROAD, VYTILA, KOCHI-682 019

BY ADVS.

SRI.P.MURALEEDHARAN (IRIMPANAM)
SRI.M.A.AUGUSTINE
SRI.P.SREEKUMAR (THOTTAKKATTUKARA)
SMT.SOUMYA JAMES
SHRI.THOMAS JACOB

RESPONDENTS/RESPONDENTS/COMPLAINANT/1ST ACCUSED:

- 1 THE INDIA CEMENTS LIMITED
41/697,ICL HOUSE, KRISHNASWAMY ROAD, KOCHI-35,
REPRESENTED BY ITS MANAGER (ACCOUNTS) AND POWER OF
ATTORNEY HOLDER MR.K.SRIDHARAN
- 2 J AND A FOUNDATIONS PVT. LTD
(UNDER LIQUIDATION) REPRESENTED BY OFFICIAL
LIQUIDATOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-682 031
- 3 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
ERNAKULAM-682 031
BY ADVS.
SRI.K.SRIKUMAR (SR.)
SHRI.K.MONI
SRI.K.MANOJ CHANDRAN
SMT.MAYA M.N - PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR HEARING
ON 15.1.2026, THE COURT ON 23.01.2026 DELIVERED THE FOLLOWING:

**CR****M.B.SNEHALATHA, J**

Crl.R.P.No.92 of 2019

Dated this the 23rd January, 2026**ORDER**

Revision Petitioner is the 2nd accused in S.T.No.5589/2011 of Judicial First Class Magistrate Court III, Ernakulam and the appellant in Crl.A. No.183/2017 of Sessions Court, Ernakulam. He calls into question the judgment of conviction and order of sentence against him for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'N.I Act').

2. The parties shall be referred to as the complainant and the accused as arraigned before the trial court.

3. The complainant is a company registered under the Indian Companies Act and it is engaged in manufacturing and distribution of cement. 1st accused is a Private Limited Company. 2nd accused is the Managing Director of the 1st accused company and he is in charge and responsible for the day-to-day affairs of the 1st accused company. Accused had a business relationship with the complainant company and the accused had purchased cement from the complainant company on a credit



basis in the course of their regular transaction. Towards partial discharge of the amount due to the complainant company, accused issued Exts.P2 to P4 cheques of ₹2 lakhs each in favour of the complainant company. Upon presentation of Exts.P2 to P4 cheques for collection, the same were returned dishonoured due to insufficient funds in the account of the accused. Upon receipt of Exts.P5, P5(a) and P5(b) dishonour memos from the bank, complainant caused to sent Ext.P6 lawyer notice to both accused, intimating the factum of dishonour of cheques and demanding the amount covered by Exts.P2 to P4 cheques. Accused accepted the notice and sent Ext.P9 reply notice. Though in the reply notice accused agreed to pay the amount, accused failed to pay the amount covered by Exts.P2 to P4 cheques and thereby committed the offence punishable under Section 138 of N.I.Act.

4. Both accused faced trial and denied their liability to pay any amount to the complainant and denied the issuance of Exts.P2 to P4 cheques to the complainant in discharge of any debt or liability.

5. Evidence consists of the oral testimonies of PW1 and documents marked as Exts.P1 to P11. No defence evidence was adduced by the accused.

6. After trial, the learned Magistrate found both accused guilty under Section 138 N.I Act. A2 was sentenced to undergo simple imprisonment for a period of one year and to pay ₹6 lakhs as



compensation to the complainant under Section 357(3) Cr.PC. In default of payment of compensation to undergo simple imprisonment for a period of three months.

7. In the appeal preferred by the 2nd accused as Crl.A.No.183/2017 before the Sessions Court, Ernakulam, the conviction under Section 138 N.I Act was confirmed, but the sentence was modified. The substantive sentence of imprisonment of one year was reduced to imprisonment till the rising of the court. The direction to pay compensation of ₹6 lakhs to the complainant under Section 357(3) Cr.P.C imposed by the trial court was not interfered with in appeal.

8. Challenging the finding of conviction and sentence, A2 has preferred this revision petition, contending that the trial court and the appellate court went wrong in appreciating the evidence in its correct perspective; that the conviction and sentence against A2 are bad in law.

9. Per contra, the learned counsel for the complainant argued that there are absolutely no reasons to unsettle the findings of the trial court and the appellate court and the revision is devoid of any merit.

10. The point for consideration is whether the impugned judgment needs any interference by this Court.

11. The evidence on record would show that the complainant is a company registered under the Indian Companies Act and it is engaged in manufacture and distribution of cement. The specific case of PW1, who



was examined on the side of the complainant, is that the 1st accused company represented by its Managing Director, namely the 2nd accused purchased cement from the complainant company on a credit basis. PW1 has further testified that in partial discharge of the amount due to the complainant, A2, who is the Managing Director and who is in charge and responsible for the day-to-day affairs of the 1st accused company issued Exts.P2 to P4 cheques for ₹2 lakhs each drawn on IDBI Bank, Kadavanthra Branch in favour of the complainant company. PW1 has further testified that though the complainant presented Exts.P2 to P4 cheques for encashment, the said cheques were dishonoured, stating the reason 'funds insufficient'. Exts.P5, P5(a) and P5(b) are the dishonour memos dated 5.4.2011 issued from the bank. PW1 has further testified that upon receipt of Ext.P5 series dishonour memos, the complainant caused to send Ext.P6 notice. Exts.P7 and P7(a) are the postal receipts. Accused accepted the notice. Exts.P8 and P8(a) are the acknowledgement cards. Ext.P9 is the reply notice sent by the accused. According to PW1, in spite of receipt of Ext.P6 lawyer notice, accused failed to pay the amount covered by Exts.P2 to P4 cheques.

12. Exts.P2 to P4 cheques coupled with Ext.P5, P5(a) and P5(b) dishonour memos issued from the bank would show that Exts.P2 to P4 cheques issued from the account maintained by the 1st accused company were dishonoured due to insufficient funds in the account of the 1st



accused. In Ext.P9 reply notice accused has admitted the transaction and the liability and they have sought time for payment. So, the case of the complainant that the accused issued Exts.P2 to P4 cheques in partial discharge of the liability stands proved.

13. In his examination under Section 313(1)(b) Cr.P.C, A2/revision petitioner herein has categorically admitted the version given by PW1 that A2/revision petitioner herein was the Managing Director of 1st accused company and he was in charge of the day-to-day affairs of the company. Accused in his examination under Section 313(1)(b) Cr.P.C has also admitted the version of PW1 that the accused purchased cement from the complainant company on a credit basis and in the said transaction, the amounts were due to the complainant company. In Ext.P9 reply notice issued by the accused 1 and 2 there is categoric admission by the accused regarding the issuance of Exts.P2 to P4 cheques. In Ext.P9 reply accused have sought time for the payment of the amount due.

14. Admittedly, A1 is a company and A2 was the Managing Director and he was in charge of the day-to-day affairs of the company. Section 141 of N.I.Act deals with offences by companies. It reads as under:

"141. Offences by companies. —

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct



of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—

For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

15. The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company. The person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant



time. This has to be averred as a fact as there is no deemed liability of a Director in such cases.

16. In the case in hand, complainant has specifically stated that the 2nd accused is the Managing Director of the 1st accused company and he was in charge and responsible for the day-to-day affairs of the company and was managing the business of the 1st accused company at the relevant time. Revision petitioner/A2 is the signatory to Exts.P2 to P4 cheques and it was he who issued Ext.P2 to P4 cheques to the complainant.

17. In *Hitesh Verma v. Health Care at Home India Pvt. Ltd.* (2025 SCC OnLine SC 528) the Apex Court held that there are twin requirements under sub-section (1) of Section 141 of N.I.Act. In the complaint, it must be alleged that the person, who is sought to be held liable by virtue of vicarious liability, at the time when the offence was committed, was in charge of, and was responsible to the company for the conduct of business of the company. (emphasis supplied)

18. The complainant has succeeded in establishing that the revision petitioner/2nd accused in his capacity as the Managing Director of the 1st accused company and who was in charge of the day-to-day affairs of the company issued Exts.P2 to P4 cheques in partial discharge of the amount due to the complainant company. It also stands established that Exts.P2 to P4 cheques issued by the accused were dishonoured due to insufficient



funds in the account of the accused and in spite of Ext.P6 notice, accused failed to pay the amount covered by the cheques.

19. The learned Magistrate and the learned Sessions Judge have appreciated the facts, evidence and law in its correct perspective. Hence, this Court find no reasons to interfere with the finding rendered by the learned Magistrate and the learned Sessions Judge that the accused have committed the offence punishable under Section 138 of the N.I Act.

20. The sentence against the 2nd accused/revision petitioner as modified by the Sessions Court do not warrant any interference by this Court and accordingly, the conviction and sentence passed against the accused stand confirmed.

The revision petition is devoid of any merit and accordingly, it stands dismissed.

The trial court shall take steps to execute the sentence.

Registry shall transmit the records to the trial court forthwith.

ab

Sd/-
M.B.SNEHALATHA
JUDGE