

## Krishnankutty P.T. Vs Auto Credits and Investments and State of Kerala

**Court:** High Court Of Kerala

**Date of Decision:** April 5, 2010

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 357(1), 357(3), 397, 401  
Negotiable Instruments Act, 1881 (NI) â€” Section 138

**Hon'ble Judges:** V. Ramkumar, J

**Bench:** Single Bench

**Advocate:** P. Vijaya Bhanu, for the Appellant; No Appearance, for the Respondent

### Judgement

@JUDGMENTTAG-ORDER

V. Ramkumar, J.

In this Revision Petition filed u/s 397 read with Section 401 Cr.P.C. the petitioner who was the accused in C.C. No.

587/2007 on the file of the J.F.C.M. Muvattupuzha challenges the conviction entered and the sentence passed against him for an offence

punishable u/s 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act"). The cheque amount was Rs. 34,400/-. The

compensation ordered by the lower appellate court is Rs. 40,000/-.

2. I heard the learned Counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned Counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision.

4. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant, that the

complainant had validly complied with Clauses (a) and (b) of the proviso to Section 138 of the Act. and that the Revision Petitioner/accused failed

to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the

revision petitioner while entering the conviction. The said conviction has been recorded after a careful evaluation of the oral and documentary

evidence. This Court sitting in the rarefied revisional jurisdiction will be loath to interfere with the findings of fact recorded by the courts below

concurrently. I do not find any error, illegality or impropriety in the conviction so recorded concurrently by the courts below and the same is hereby

confirmed.

5. What now survives for consideration is the legality of the sentence imposed on the revision petitioner. In the light of the decision of the Supreme

Court in Ettappadan Ahammedkutty v. E.P. Abdullakoya 2008 (1) KLT 851 default sentence cannot be imposed for the enforcement of an order

for compensation u/s 357(3) Cr.P.C. I am, therefore, inclined to modify the sentence to one of fine only.

Accordingly, for the conviction u/s 138 of the Act the revision petitioner is sentenced to pay a fine of Rs. 43,000/- (Rupees forty three thousand

only). The said fine shall be paid as compensation u/s 357(1) Cr.P.C. The revision petitioner is permitted either to deposit the said fine amount

before the Court below or directly pay the compensation to the complainant within five months from today and produce a memo to that effect

before the trial Court in case of direct payment. If he fails to deposit or pay the said amount within the aforementioned period he shall suffer simple

imprisonment for three months by way of default sentence.

In the result, this Revision is disposed of confirming the conviction entered but modifying the sentence imposed on the revision petitioner.

Dated this the 5th day of April, 2010.