

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 21<sup>ST</sup> DAY OF DECEMBER 2023 / 30TH

AGRAHAYANA, 1945

CRL.REV.PET NO.578 OF 2023

AGAINST THE ORDER DATED 20.04.2023 IN CMP 1174/2023 IN CC NO.3247/2015 ON THE FILES OF THE TEMPORARY SPECIAL COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS FOR THE TRIAL OF CASES U/S 138 OF N.I Act, THIRUVANANTHAPURAM

REVISION PETITIONER/COUNTER PETITIONER/ACCUSED:-

BISMI AZHAR

AGED 47 YEARS

D/O.SARASSAMMA, RESIDING AT SREE MANGALAM,  
ALAPPURAM LANE, THIRUMALA POST,  
THIRUVANANTHAPURAM, PIN - 695006

BY ADVS.

G.P.SHINOD

GOVIND PADMANAABHAN

AJIT G ANJARLEKAR

ATUL MATHEWS

GAYATHRI S.B.

RESPONDENTS/STATE AND PETITIONER/COMPLAINANT:-

- 1 STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
- 2 SAJITH T S  
AGED 51 YEARS  
S/O.THANKAPPAN, RESIDING AT T C 17/2441 (2),  
VAIKUNDAM, THYCAUD POST, THIRUVANANTHAPURAM,  
PIN - 695014  
BY ADVS.  
M.R.ANANDAKUTTAN  
M.HEMALATHA (K/358/1977)  
MAHESH ANANDAKUTTAN (K/1234/2004)  
M.J.SAJITHA (K/000218/2006)  
SMT MAYA M.N.-PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 21.12.2023, ALONG WITH Crl.Rev.Pet.580/2023, 582/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Crl.R.P.No.578 of 2023 and conn cases

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 21<sup>ST</sup> DAY OF DECEMBER 2023 / 30TH

AGRAHAYANA, 1945

CRL.REV.PET NO.580 OF 2023

AGAINST THE ORDER DATED 20.04.2023 IN CMP 1171/2023 IN  
CC NO.1321/2015 ON THE FILES OF THE TEMPORARY SPECIAL  
COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS FOR THE  
TRIAL OF CASES U/S 138 OF N.I Act, THIRUVANANTHAPURAM

REVISION PETITIONER/COUNTER PETITIONER/ACCUSED:

BISMI AZHAR

AGED 47 YEARS

D/O.SARASSAMMA, RESIDING AT SREE MANGALAM,  
ALAPPURAM LANE, THIRUMALA POST,  
THIRUVANANTHAPURAM, PIN - 695006

BY ADVS.

G.P.SHINOD

GOVIND PADMANAABHAN

AJIT G ANJARLEKAR

ATUL MATHEWS

GAYATHRI S.B.

RESPONDENT/STATE AND PETITIONER/COMPLAINANT:

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

2 SAJITH T S  
AGED 51 YEARS  
S/O.THANKAPPAN, RESIDING AT T C 17/2441 (2),  
VAIKUNDAM, THYCAUD POST, THIRUVANANTHAPURAM,  
PIN - 695014

BY ADVS.

M.R.ANANDAKUTTAN

M.HEMALATHA (K/358/1977)

MAHESH ANANDAKUTTAN (K/1234/2004)

M.J.SAJITHA (K/000218/2006)

SMT MAYA M N - PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR  
ADMISSION ON 21.12.2023, ALONG WITH  
Crl.Rev.Pet.578/2023 AND CONNECTED CASES, THE COURT ON  
THE SAME DAY DELIVERED THE FOLLOWING:

Crl.R.P.No.578 of 2023 and conn cases

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 21<sup>ST</sup> DAY OF DECEMBER 2023 / 30TH

AGRAHAYANA, 1945

CRL.REV.PET NO. 582 OF 2023

AGAINST THE ORDER DATED 20.04.2023 IN CMP 1173/2023 IN  
CC NO.1240/2015 ON THE FILES OF THE TEMPORARY SPECIAL  
COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS FOR THE  
TRIAL OF CASES U/S 138 OF N.I Act, THIRUVANANTHAPURAM

REVISION PETITIONER/COUNTER PETITIONER/ACCUSED:-

BISMI AZHAR

AGED 47 YEARS

D/O.SARASSAMMA, RESIDING AT SREE MANGALAM,  
ALAPPURAM LANE, THIRUMALA POST,  
THIRUVANANTHAPURAM, PIN - 695006

BY ADVS.

G.P.SHINOD

GOVIND PADMANAABHAN

AJIT G ANJARLEKAR

ATUL MATHEWS

GAYATHRI S.B.

RESPONDENTS/STATE AND PETITIONER/COMPLAINANT:

1 STATE OF KERALA

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

2 SAJITH T S

AGED 51 YEARS

S/O.THANKAPPAN, RESIDING AT T C 17/2441 (2),  
VAIKUNDAM, THYCAUD POST, THIRUVANANTHAPURAM,  
PIN - 695014

BY ADVS.

M.R.ANANDAKUTTAN

M.HEMALATHA (K/358/1977)

MAHESH ANANDAKUTTAN (K/1234/2004)

M.J.SAJITHA (K/000218/2006)

SMT.MAYA M N - PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR  
ADMISSION ON 21.12.2023, ALONG WITH  
Crl.Rev.Pet.578/2023 AND CONNECTED CASES, THE COURT ON  
THE SAME DAY DELIVERED THE FOLLOWING:

Crl.R.P.No.578 of 2023 and conn cases

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 21<sup>ST</sup> DAY OF DECEMBER 2023 / 30TH

AGRAHAYANA, 1945

CRL.REV.PET NO. 585 OF 2023

AGAINST THE ORDER DATED 20.04.2023 IN CMP 1172/2023 IN  
CC NO.2778/2015 ON THE FILES OF THE TEMPORARY SPECIAL  
COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS FOR THE  
TRIAL OF CASES U/S 138 OF N.I Act, THIRUVANANTHAPURAM

REVISION PETITIONER/COUNTER PETITIONER/ACCUSED:

BISMI AZHAR

AGED 47 YEARS

D/O.SARASSAMMA, RESIDING AT SREE MANGALAM,  
ALAPPURAM LANE, THIRUMALA POST,  
THIRUVANANTHAPURAM, PIN - 695006

BY ADVS.

G.P.SHINOD

GOVIND PADMANAABHAN

AJIT G ANJARLEKAR

ATUL MATHEWS

GAYATHRI S.B.

RESPONDENTS/STATE AND PETITIONER/COMPLAINANT:

1 STATE OF KERALA

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

2 SAJITH T S

AGED 51 YEARS

S/O.THANKAPPAN, RESIDING AT T C 17/2441 (2),  
VAIKUNDAM, THYCAUD POST, THIRUVANANTHAPURAM,  
PIN - 695014

BY ADVS.

M.R.ANANDAKUTTAN

M.HEMALATHA (K/358/1977)

MAHESH ANANDAKUTTAN (K/1234/2004)

M.J.SAJITHA (K/000218/2006)

SMT SEENA C - PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR  
ADMISSION ON 21.12.2023, ALONG WITH  
Crl.Rev.Pet.578/2023 AND CONNECTED CASES, THE COURT ON  
THE SAME DAY DELIVERED THE FOLLOWING:

Crl.R.P.No.578 of 2023 and conn cases

**P.G. AJITHKUMAR, J.**

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**Crl.R.P.Nos.578, 580, 582 and 585 of 2023**  
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**Dated this the 21<sup>st</sup> day of December, 2023**

**ORDER**

These revision petitions under Section 397 r/w 401 of the Code of Criminal Procedure, 1973(Code) are filed challenging similar orders of the temporary Special Court of the Judicial Magistrate of First Class, for the trial of cases under Section 138 of Negotiable Instruments Act, 1881 (NI Act) Thiruvananthapuram. The order reads:

"Petition is filed to admit true copy of cheque. Complainant counsel submitted that original cheque is lost. The photocopy can be admitted as secondary evidence. In **Chitaranjan v. Jayarajan [2005 KHC 132]**, Hon'ble High Court held that, if the cheques are lost it would be improper to deny the complainant an opportunity to substantiate his grievance by adducing secondary evidence as permitted under Section 65 of Evidence Act. In the light of the above decision petition is allowed. Petitioner is permitted to produce secondary evidence of cheque under Section 65(C) of the Indian Evidence Act. Hence the petition is allowed."

2. The accused in the respective cases filed this

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revision petitions aggrieved by the said order.

3. Heard the learned counsel for the petitioner, the learned Public Prosecutor and the learned counsel for the 2<sup>nd</sup> respondent.

4. The 2<sup>nd</sup> respondent has filed respective complaints alleging commission of offence punishable under Section 138 of the NI Act by the petitioner. The 2<sup>nd</sup> respondent filed respective petitions seeking permission to produce photocopy of the original cheque as secondary evidence. It was contended that the cheques were misplaced and despite earnest efforts, the same could not be traced. On that ground, permission was sought to adduce secondary evidence. Photocopies of the respective cheques were produced as secondary evidence.

5. The petitioner opposed that petition contending that since the very basis of the prosecution is the cheque, no permission could be granted to produce a photocopy as secondary evidence. It is further contented that without any bonafides, such petitions were filed.

6. What the learned Magistrate permitted as per the

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impugned orders is to produce secondary evidence. Secondary evidence can be produced before a court only in terms of Section 65 of the Evidence Act. Whether the circumstance mooted by the 2<sup>nd</sup> respondent to invoke the provisions of Section 65 of the Evidence Act really exists is a matter to be decided by the court at the time of trial and recording of evidence. Permission to produce a document cannot be refused at the threshold. The Court can receive or refuse to receive secondary evidence only when the circumstance enabling the person to adduce secondary evidence is proved. In that view of the matter, permission given as per the impugned order cannot be said to be incorrect. The order is not to receive the secondary evidence, instead, it is only a permission to the 2<sup>nd</sup> respondent to adduce secondary evidence. Whether or not that evidence should be admitted in evidence, is a question to be decided after appreciation of the relevant evidence.

7. That apart, the impugned order cannot be treated as an intermittent or final order, but only an interlocutory order coming within the purview of Section

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397(2) of the Code. As held in **Madhu Limaye v. State of Maharashtra [1977 (4) SCC 551]**, the criteria to decide whether an order is interlocutory or not is that whether the order rejecting the plea of the accused on a point, when accepted, will conclude the particular proceedings. Viewed so, the impugned order can only be an interlocutory order and therefore this revision petition is not maintainable in law also.

In the circumstances, these revision petitions are dismissed, however, with the aforesaid observations.

**Sd/-  
P.G. AJITHKUMAR  
JUDGE**

PV



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**APPENDIX OF CRL.REV.PET 580/2023**

**RESPONDENTS ANNEXURES**

- Annexure-R2 (a)**      A true copy of the Written Statement  
in O. S. No. 810 of 2014 before the  
Munsiff's Court of Thiruvananthapuram  
dated nil (Re-numbered as O. S. No.  
171 of 2016 before the Subordinate  
Judge's Court of Thiruvananthapuram)
- Annexure-R2 (b)**      A true copy of the affidavit dated  
15-02-2023

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**APPENDIX OF CRL.REV.PET 578/2023**

**RESPONDENT ANNEXURES**

**Annexure-R2 (a)**      A true copy of the original plaint in  
O. S. No. 810 of 2014 dated 19-04-  
2014 before the Munsiff's Court of  
Thiruvananthapuram