

IN THE COURT OF THE SUB JUDGE, CHENGANNUR

Present :- Smt.Veena.V.S, Sub Judge

Tuesday, the 24th March 2026/3rd Chaithram 1948

IA No. 04/2025 in OS 16/2025

(Filed on.10.12.2019)

Petitioner/Plaintiff :- Mr Roopesh O.B, aged 42 years,
S/o. Nanu Bhasuran, Nirmalyam House,
Pilapuzha, Haripad Desom, Haripad Village,
Karthikapally Taluk, Alappuzha District,

(By Adv.P.P. Stella)

Respondent/ Defendant :- Mr. Anil Kumar K, aged about 48 years
S/o. Karunakaran, Pooja Residence,
Kizhunna.P.O, Kizhunna Desom,
Eadakkad Amsam/Village,
Kannur Taluk, Kannur District.

(By Adv. Maranadu. G.Krishnakumar)

This petition having been finally heard on 11.03.2026 and this court on 24.03.2026 passed the following.

ORDER

The petition is filed under Order XXXIX Rule 2 (a) of CPC.

Petition averments in brief are as follows.

2. The petitioner is the plaintiff in the above suit. The suit is one for declaring that

5 cheques of State Bank of India, Danapadi Harippad Branch as null and void and is without any consideration and for mandatory injunction by directing the defendants to return the cheque to the plaintiff. Along with the suit the plaintiff filed IA 287/2019 for an interim mandatory injunction and this court allowed the application with a direction to the defendants to produce the petition schedule documents 5 in numbers forthwith before the court. The order was duly served on the respondent's wife in his house address and the order is still in force. The plaintiff got proper information of the order of the court immediately as the notice was served on his wife on 15-02-2019. The respondent has full and direct knowledge about the injunction order. Even though he appeared through the pleader, he did not produce the disputed cheque before the court. Thus the respondent violated the injunction order of this court willfully. Hence the prosecution is filed with a prayer to arrest and detain the respondent in Civil Prison and to attach his properties.

3. The respondent/the defendant filed objection by contending that the petition is not maintainable either in law or on facts. The defendant has been doing business in Muscat for the last 3 decades. The disputed cheques were executed by the plaintiff in favour of the defendant on a lawful consideration. On presentation of cheque those were returned with the reason that payment stopped by the drawer. The defendant is entitled to get recovered the amount covered by the agreements and cheque. He filed a suit as OS 10/2019 against the plaintiff for recovery of amount. Further he initiated

proceedings U/S. 138 of The Negotiable Instrument Act against the plaintiff before the Additional Judicial First Class Magistrate Court at Thalassery in Kannur as ST 459/2019, ST 460/2019 and ST 461/2019 on the basis of the dishonoured cheque and those cases are pending before the said courts. No order of temporary injunction was ever served on this defendant in this case and he was unaware about passing of any such order at any time. No injunction order was ever served on him. Hence the petition for prosecution will not sustain. Even if any such order was passed, the same is per se illegal and against the specific provisions of The Specific Relief Act barring passing of a restraint order against initiating legal proceedings. Since the suit itself was filed only after dishonour of the cheques the plaintiff is legally barred from filing any suit of this nature against initiating legal proceedings based on such cheques. Hence the prosecution petition may be dismissed with the costs of the respondent.

4. From the above petition averments and contentions in the objections the following points were raised for consideration.

1. Whether the respondent willfully violated the injunction order passed against him in this case?
2. Relief and costs?

5. From the side of the petitioner Exbt. A1 to A4 series documents were marked. There is no evidence adduced from the side of respondent.

6. Heard both sides. Perused the records.

Point Nos. 1 and 2 :-

7. From the case records it is apparent that the suit was originally filed before the Munsiff Court, Haripad along with a mandatory injunction petition as IA 257/2019. Exbt. A1 document shows that the learned Munsiff Haripad allowed the mandatory injunction petition by passing an ex parte order against the respondent that 'the respondent is hereby directed to produce the petition schedule documents five in number forthwith before this court and the petitioner shall comply with Order XXXIX Rule 3(a) and 8. The order was passed on 08-02-2019 when the suit and injunction petition were instituted.

8. Exbt. A2 series are the copies of the report of process server and the injunction order passed in IA 257/2019. It is clear from Exbt. A2 series document that the said order was not served to the defendant or his wife. It was returned unserved with the report that the respondent is in Gulf and his wife did not ready to accept the order for him. Exbt. A3 is the copy of the general power of attorney dated 28-02-2019 executed by the defendant in favour of his Power of Attorney Holder in which it is specifically stated that the defendant is at Gulf and the said Power of Attorney was executed at the embassy of India Muscat. The said Power of Attorney was executed for contesting the present suit and instituted the suit for recovery of money against the plaintiff on the basis of the dishonoured cheques.

9. Exbt. A4 series are the copies of notice and summons of the defendant in this case. The said document show that the wife of the defendant accepted the same. So from the evidence adduced before the court it made clear that even though the wife of the defendant accepted summons and notice in this case for and on behalf of the defendant who is in Gulf at that time, she did not accept the injunction order passed by the court against him.

10. The case records shows that the next posting of the case was on 18-02-2019 for return of notice of the respondent. On perusal of IA 257/2019 it is learnt that the respondent was not appeared on 18-02-2019 and the notice of the defendant/respondent was not returned to the court. Hence the case is posted to 21-03-2019 with an order that petitioner represented await return of summons to 21-03-2019. Thenafter there was no posting on IA 257/2019. IA 257/2019 shows that the respondent did not appear or file objection by accepting the injunction order as no further proceedings was taken on IA 257/2019 till the date. So from the case proceedings it does not clear whether order was subsequently served to the defendant/ respondent at any point of time of the case proceedings.

11. In the absence of any evidence to prove the fact that the exparte order in IA 257/2019 was duly communicated to the respondent, the court cannot come into a conclusion that the respondent willfully violated the injunction order passed in IA 257/2019. Since the prosecution petition is penal in nature, the allegation should be

proved beyond reasonable doubt. But in this case the evidence adduced from the side of the petitioner is not sufficient to prove the fact that the respondent/defendant violated the injunction order willfully and deliberately. So the prayer in the prosecution petition is not at all allowable.

In the result, the petition is dismissed. No order as to costs.

Dictated to the confidential Assistant, transcribed and typed by her, corrected by me and pronounced in Open Court on this the 24th day of March 2026.

Sd/-
Veena. V.S
Sub Judge

Appendix:

Witness on the side of Petitioner: Nil

Exhibits on the side of Petitioner:

A1	-	08.02.2019	-	Order in IA 257/19 in OS 33/19 of Munsiff Court, Haripad.
A2	-	11.02.2019	-	Injunction order passed in IA 257/19.
A2(a)	-	15.02.2019	-	Report of Process Server.
A3	-	28.02.2019	-	Copy of the general power of attorney
A4	-	16.02.2019	-	Copies of summons of defendant.

A4(a) - 16.02.2019 - Copies of Notice of defendant.

Witness and Exhibits from the side of the Respondent:- Nil

Id/-
Sub Judge

//True Copy//

Sub Judge

Typed By: Sandhya
Comped By: Anjali