

IN THE COURT OF THE JUDICIAL I CLASS MAGISTRATE, MATANCHERRY
Present: Shri. BALRAM M.K., Judicial First Class Magistrate

Dated, this the 04th day of June, 2025

Order in C.M.P 1845/2024 in CC 270/2016

Petitioner/Complainant : Kurian Jose Jr. aged 54, S/o.Jose Kurian,
Deepa Building, Santo Gopalan Road,
Chullickal, Kochi-682 005

(By Adv. Shiju Varghese and K.S.Sreejith)

Respondents/Accused : 1. Blue Dot Constructions (P) Ltd., Veejay
Towers, 3rd Floor, Salim Rajan Road,
Gandhi Nagar North End, Ernakulam-682
020

2. Mr.T.G.Varghese (Died), The Managing
Director, Blue Dot Constructions (P) Ltd,
Project Office, Door No.CC/1942,
XXXVIII, B1, Giri Nagar North, Gandhi
Nagar, Kadavanthra, Ernakulam-682 020
(Died)

3. Ms.Prasanna Kumari, Margin Free
Super Market, West of Tripunithura Bus
Stand, Tripunithura-682 301

(By Advocate Vinu Chand)

Offence : U/s.138 of Negotiable Instruments Act

Order : Petition stands allowed

ORDER

This is an application filed to amend the original complaint.

2. The averments in the petition in brief are as follows:- The first accused is a Private Limited Company. The second accused expired on 14.12.2016. It is highly necessary to proceed against the first accused company who is represented by the sole surviving director who is the third accused. Hence, the application is filed.

3. The averments in the objection in brief are as follows:- The petition is not maintainable either in law or on facts. The third accused is not a signatory to the cheque. Allegations against the third accused is absolutely false and complainant is a total stranger to the third

accused. There is no provision for amendment in the Negotiable Instruments Act. The sole intention of the complainant is to blackmail the third accused and to snatch money. Hence the application has to be dismissed.

4. Heard both sides.

5. The following points arise for consideration:-

1. Whether the petition is liable to be allowed?
2. What is the order?

Point No.1

6. The learned Counsel for the complainant submitted that this application is filed as the second accused is no more and the case against the first accused Company has to be continued wherein the third accused who is sole surviving director of the first accused company represents the first accused. On the other hand, the learned counsel for the third accused objected the same stating that complainant is a total stranger to the accused. The learned counsel for the third accused further argued that the third accused is not the director of the company at the time of dishonour of cheque and the third accused was appointed as an Additional Director of the company on 01.04.2005 u/s.161 of Companies Act. The learned counsel for the third accused further submitted that the third accused is not involved in the day to day affairs of the company and there is no communication from the annual general meeting of the first accused company to the Registrar of the Companies with respect to the extension of tenure of third accused as Additional Director.

7. Even though the contention taken by the third accused during the arguments were not mentioned in the objection, the third accused filed an affidavit mentioning these contentions. The complainant filed an application as CMP 330/2025 u/s.94 of BNSS (Section 91 Cr.P.C.) to direct the Registrar of Companies to produce the relevant documents

disclosing the names of the Board of Directors of the first accused company from 01.04.2011 to 31.03.2012 and the same was allowed and accordingly, the Registrar of Companies produced two documents. The first document is the certified true copy of Master data of first accused company and the second document is certified true copy of the board of directors of the first accused company. The second document reveals the name of third accused as the director and the date of appointment is seen mentioned as 01.04.2005. The first document indicates the date of AGM as 10.11.2006.

8. This is a case filed against the accused by the complainant u/s.138 of N.I.Act. Altogether there are three accused. The first para of the complaint clearly gives a picture that the first accused is the company and the second accused is its Managing Director and the third accused is the director of the first accused. The second accused is reported no more and copy of his death certificate is seen produced and the proceedings sheet reveals that, the case against second accused stands abated on 16.08.2023. In such circumstances, the complainant filed an application to get the complaint amended. In the amendment petition, the relief is sought to amend the complaint as follows:-

1. On page No.1 of the main complaint, following the cause title, in the address part of the first accused after the 4th line, after pin code 682020, insert **“Represented by its Director, Prasanna Kumari, Margin Free Super Market, West of Thripunithura Bus Stand, Thripunithura-682301.”**
2. On Page No.1 of the main complaint, following the cause title, in the address part of the third accused after the 3rd line, after pin code 682031, insert **“the Director of Blue Dot Constructions (P) Ltd”**
3. On Page No.1 of the complaint, following the provision of the law, in the 1st paragraph, continue the 4th line after the word accused, by inserting **“the second**

accused is expired during the pendency of litigation and hence the first accused company is represented by the sole surviving Director, who is also the third accused herein”.

9. One of the contention raised from the side of the third accused is that, she is an additional director appointed under Section 161 of Companies Act on 01.04.2005. No documents are produced from the side of respondent to show that the third accused is appointed as an additional director. But on the other side, the true copy of the Board of Directors of accused company which is produced by the Registrar of Companies clearly indicates that the third accused is a director and not an additional director. The date on the cheques is 20.02.2012. There is already pleadings in the first para of the complaint that the accused 2 to 3 are actively managing the affairs and business of the first accused. Considering all these aspects, I am of view that the relief sought to amend the petition is very reasonable. In fact, the respondent who is the third accused is already in the party array and the first para of the complaint also indicates the third accused as the director of the first accused. The amendment sought is only with respect to the consequence of death of the second accused. No new fact is introduced in the amendment sought. Considering all these aspects, I am of view that this petition is liable to be allowed. This point is answered in favour of the petitioner.

Point No.2

10. In the light of findings in point No.1, the petition is liable to be allowed.

In the result, the petition is allowed.

Dictated to the Confidential Assistant, corrected and pronounced by me in open Court on this the 04th day of June, 2025.

Sd/-
**Judicial First Class Magistrate,
Mattancherry.**