

IN THE COURT OF ADDL. SESSIONS JUDGE-IV, KOTTAYAM

Present : Dr. Satheesh Kumar V., Addl. Sessions Judge-IV, Kottayam

Thursday the 26th day of March 2026

5th day of Chaithra 1948

CRIMINAL APPEAL No.65/2023

(S. T. No.1236/2019 of Judl. First Class Magistrate Court-II, Kottayam)

Appellant :-

Issac Varghese, aged 56 years, S/o Varkey, Irumala Veedu,
Panipra P O, Thrikariyoor, Kothamangalam,
Ernakulam District-686501.

By Adv. Reghukumar B

Respondents :-

- 1 Allianz Financial Corporation, Igloo Tower, West Temple Road ,
Kottayam, Represented by Its Proprietor Ashy Mathew, Aged 52,
S/o.Mathew P Scaria, Paloor Puthenveedu, Puthuppally P O,
Kottayam - 686011
- 2 State of Kerala represented by Public Prosecutor, Kottayam
R1 – No vakalath
R2 – By Adv. P Vinodji, Additional Public Prosecutor

Charge :- U/s.138 of the NI Act

Finding :- Guilty

Sentence /Order of Trial Court :-

The accused is found guilty of the offence punishable u/s. 138 of the N.I. Act and he is convicted for the said offence u/s.255(2) Cr.P.C. The accused is sentenced to imprisonment till the rising of the court and also to pay a fine of Rs.1,16,000/ (Rupees One Lakh Sixteen Thousand only). In default of payment of fine amount, the accused shall undergo simple imprisonment for a term of three months. On recovery of the fine amount, an amount of Rs.1,11,000/ (Rupees One Lakh Eleven Thousand only) is directed to be paid to the complainant as compensation under section 357(1)(b) of Cr.P.C.

Result of Appeal :

1. The appeal is partly allowed.
2. The judgment of conviction and sentence in S.T. No.1236/2019 is hereby set aside.
3. The case is remanded to the Judicial First Class Magistrate Court-II, Kottayam, for fresh consideration.
4. The learned Magistrate shall provide an opportunity to the complainant to adduce further evidence to prove the reason for the "Account Blocked" status and the availability of funds at the material time.
5. The accused shall also be entitled to lead rebuttal evidence.
6. Parties shall appear before the trial court on 07.05.2026.

This Criminal appeal having been finally heard on 09.02.2026 and the Court on 26.03.2026 delivered the following :-

JUDGMENT

1. This Criminal Appeal is filed under Section 374(3) of the Code of Criminal Procedure, 1973, challenging the judgment of conviction and sentence dated 16.03.2023 passed by the Judicial First Class Magistrate Court-II, Kottayam in S.T. No.1236/2019. The learned Magistrate found the appellant guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and sentenced him to undergo simple imprisonment for one day till the rising of the court and to pay a fine of Rs.1,16,000/-, with a default clause of three months simple imprisonment. Out of the fine amount, Rs.1,11,000/- was directed to be paid to the complainant as compensation under Section 357(1)(b) of the Cr.PC. Aggrieved by the said conviction, the appellant has preferred this appeal on the grounds of improper appreciation of evidence and errors in the application of law.

2. The case of the complainant, Allianz Financial Corporation, is that it is a proprietorship concern engaged in the business of conducting chitties. The accused, Issac Varghese, was a subscriber to a chitty (A-TD/12-10/02) which commenced on 04.12.2010 for a total amount of Rs.1,00,000/-. The accused was a successful bidder in the auction held on 18.04.2011 and received the prized amount of Rs.70,000/-. It is alleged that the accused subsequently defaulted on the remaining instalments, leading to an outstanding liability of Rs.86,000/-. In discharge of this liability, the accused issued a cheque bearing No.358221 dated 26.12.2017 for Rs.86,000/- drawn on his account with the State Bank of Travancore, Odakkali Branch. Upon presentation, the cheque was returned dishonoured with the endorsement "Account Blocked" as per the return memo dated 03.01.2018. Despite receiving the statutory notice dated 15.01.2018, the accused failed to pay the amount, leading to the filing of the complaint.
3. The trial court took cognisance, and the particulars of the offences under Section 138 of the NI Act were read over and explained to the accused, who pleaded not guilty and claimed to be tried.
4. To prove the case, the proprietor of the complainant firm was examined as PW1, and documents Exts. P1 to P9 were marked. Following the close of prosecution evidence, the accused was examined under Section 313(1) (b) of the CrPC, wherein he denied the incriminating circumstances. The accused contended that the complainant was not authorised to conduct chitties in Kerala and that he had handed over blank signed cheques as security at the commencement of the chitty, which were later misused. He further marked Ext. D1, a passbook, in support of his defence. The

trial court, however, rejected the defence contentions and convicted the accused as prayed for.

5. In the appeal, this court called for the trial court records. Heard both sides.
6. **Based on the records and the memorandum of appeal, the following points for determination are framed:**
 1. Whether the trial court was justified in its appreciation of the evidence regarding the execution of the cheque?
 2. Whether the dishonour of the cheque for the reason "Account Blocked" attracts liability under Section 138 of the NI Act without further evidence from the bank?
 3. Whether the conviction and sentence imposed are legal and proper?
7. **Points 1 & 2** : The learned counsel for the appellant argued that the "Account Blocked" status of the bank account is not equivalent to insufficiency of funds and that the complainant failed to examine any bank official to prove that the block was due to any act of the accused. It was further submitted that the complainant firm's registration was limited to Haryana, and it had no authority to conduct chitties in Kerala. The learned Public Prosecutor, on the other hand, supported the trial court's findings, stating that the issuance of the cheque was admitted and the legal presumptions under Section 139 of the NI Act should apply.
8. The prosecution relied on the testimony of PW1 (Ashy Mathew). The following documents were marked: Ext. P1: Registration Certificate. Ext. P2: Dishonoured Cheque No. 358221. Ext.P3: Cheque Return Memo. Ext. P4: Statutory Lawyer's Notice. Ext.P5 & P6: Postal Receipt and Acknowledgement Card. Ext. P7: Statement of Account. Ext.P8 & P9:

Consent letter and Payment Voucher. The defence marked Ext. D1 (Chitty Passbook).

9. A careful perusal of the testimony of PW1 reveals that the entire claim is based on a chitty transaction where the accused allegedly defaulted after receiving the prize amount. While the accused admits to subscribing to the chitty, he specifically challenges the execution of the cheque, stating it was given as security in a blank form. Ext. D1 passbook shows various entries that contradict the total liability claimed in the complaint. Crucially, the return memo (Ext. P3) indicates the reason for dishonour as "Account Blocked".
10. The core legal issue revolves around whether the reason "Account Blocked" is sufficient to attract Section 138 of the NI Act. As held by the Hon'ble High Court of Kerala in *M/S Sree Gokulam Chit & Finance Co. Pvt Ltd vs. Mr. Joy* (CRL.A. No. 1496 of 2012) and *George Mathai vs. Anurag K. Haridas* (2025 KER 52765), a dishonour for the reason "Account Blocked" cannot be considered akin to "insufficiency of funds" unless it is proved that the account was blocked due to the drawer's action to evade payment. The burden lies on the complainant to examine a competent officer from the bank to explain the circumstances of the block. In *George Mathai* (Supra), the Hon'ble High Court allowed revision and remanded the case for further evidence to determine liability.
11. The trial court erred in failing to notice that the complainant did not examine any witness from the bank to prove the reason for the account block. Without such evidence, the prosecution under Section 138 of the NI Act is not sustainable as the essential ingredient of "insufficiency of funds" or "arrangement" is not prima facie established.

12. The need for a remand in this case is based on the importance of addressing a significant gap in evidence regarding the reason for the "Account Blocked" status. Under Section 386(b)(i) of the Code of Criminal Procedure, an appellate court has the power to reverse a finding and sentence and order a re-trial or a remand when the record reveals that material evidence was omitted, leading to a potential failure of justice. A simple acquittal would be improper where the transaction itself is admitted, but the technicality of the bank's endorsement remains unverified. As observed in ***George Mathai*** (Supra), when the endorsement is "Account Blocked," it is the duty of the court to afford the parties an opportunity to examine bank officials to determine whether the block was within the drawer's control. The interests of justice demand that the truth be ascertained through a limited re-trial rather than dismissing the complaint on a technicality that can be clarified through proper evidence. These points are decided accordingly.
13. **Point No.3** : On the first two points, this court finds that the complainant failed to prove that the "Account Blocked" status was a result of the accused's intentional default or insufficiency of funds. Following the precedent in ***George Mathai vs. Anurag K. Haridas*** (supra), where a similar situation arose, the case warrants a remand to provide the complainant an opportunity to adduce further evidence by examining the bank official.
14. **In the result:**
 1. ***The appeal is partly allowed.***
 2. ***The judgment of conviction and sentence in S.T. No.1236/2019 is hereby set aside.***
 3. ***The case is remanded to the Judicial First Class Magistrate Court-II, Kottayam, for fresh consideration.***

- 4. The learned Magistrate shall provide an opportunity to the complainant to adduce further evidence to prove the reason for the "Account Blocked" status and the availability of funds at the material time.***
- 5. The accused shall also be entitled to lead rebuttal evidence.***
- 6. Parties shall appear before the trial court on 07.05.2026.***

(Dictated to and typed by the Dictation Software, corrected by me and pronounced in open court on this 26th day of March, 2026)

Sd/-
Dr. Satheesh Kumar V
Addl. Sessions Judge-IV

Appendix : Nil

Id/-
Addl. Sessions Judge-IV

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Copied by :-
Compared by :-

Sd/-
Dr. Satheesh Kumar V
Addl. Sessions Judge-IV