

IN THE COURT OF III ADDITIONAL SESSIONS JUDGE, THRISSUR
PRESENT: SRI. JAYAKRISHNAN.G.P, III ADDITIONAL SESSIONS
JUDGE, THRISSUR

Monday, the 15th day of June, 2026/25th Jaishtha 1948 SE

CRIMINAL APPEAL No: 235/2018

**(C.C. 18/2017 of the Judicial First Class Magistrate Court No.II,
Wadakkanchery)**

Appellant:- Fadeela, Aged 25 Yrs., W/o Abdul Rasheed, D/o
Abdul Rahiman, Pudavangottunjali House,
Nedumpura Village, Vettikkattiri P.O., Thrissur Dist.

(By Adv. A. Haridasan)

Respondents: 1. Sreekumar , Aged 33 Yrs., S/o Sethumadhavan,
Kalarikkal House, Mullurkkara Village and Desom,
Thalappilly Taluk, Thrissur District.

2. State of Kerala, Rep by Public Prosecutor, Thrissur.

(R1– Adv. N. Santhosh, R2- Addl. Public Prosecutor)

The Sentence and law
under which it was
imposed in the lower
court:-

The accused is found guilty, convicted
and sentences to undergo simple
imprisonment till the raising of the
court and to pay a compensation of Rs.
6,00,000/- to the complainant under
Sec. 138 of Negotiable Instruments Act.
In default on payment of the
compensation, accused shall undergo
simple imprisonment for 6 months and
if the compensation is realised in full,
the same shall be given to the
complainant under Sec. 357(3) Cr.PC.

Whether confirmed,

Crl. Appeal is Allowed.

modified or reversed
and if modified the
modification :-

Date of or on which

Presentation	: 20/04/2018
Filing	: 20/04/2018
Notice issued by court to appear Bail bond if appellant has been let out on bail	: -
Appellant ordered to appear	: 20/05/2019
Hearing	: 22/11/2022
Order	: 15/06/2026

This appeal is coming on this day for hearing, the court delivered the following:-

J U D G M E N T

This is a criminal appeal preferred under Section 374 of the Code of Criminal Procedure.

2. The appellant herein is the accused in C.C No. 18 of 2017 on the files of the learned Judicial First Class Magistrate Court- II, Wadakkanchery. The learned Magistrate has convicted the accused and sentenced to undergo imprisonment till rising of the Magistrate and directed to pay compensation of Rs.6,00,000/- to the complainant with default sentence of six months simple imprisonment vide judgment dated 07.04.2017. Having been aggrieved by the conviction and consequential sentence, the accused has preferred this appeal.

3. The prosecution case in brief as follows: In discharge of the liability of Rs. 7,50,000/- received as hand loan from the complainant, the accused has issued two cheques to be drawn on 08.09.2012 from his account maintained at Catholic Syrian Bank, Mulloorkkara Branch. The complainant has submitted the cheque for Rs 6,00,000/- for collection. However the cheque was dishonoured due to the reason 'insufficient funds'. The complainant has issued notice demanding the return of amount within the time prescribed. The accused has accepted the notice but did not discharge the liability. Hencethe complainant/respondent has preferred the complaint before the learned Judicial First Class Magistrate Court-I, Wadakkanchery. Meanwhile the learned Chief Judicial Magistrate, Thrissur has made over this case to the learned Judicial First Class Magistrate Court-II, Wadakkanchery.

4. The learned Judicial First Class Magistrate Court- I, Wadakkanchery has complied the legal formalities of summons trial. However the learned Judicial First Class Magistrate Court -II, Wadakkanchery, to whom the case was made over has not given opportunity to the accused for cross-examination of the complainant by citing the decision of the Hon'ble Supreme Court in ***Indian Bank Association and others Vs Union of India and others [2014 (2) KLT 788]***. Thereafter the learned Magistrate has satisfied with the evidence adduced from the side of the complainant and went on to convict and sentence the accused.

5. The learned counsel for the appellant/accused has contended that the judgment of the court below is not sustainable. The court below has not considered the right of the accused to defend the case. No opportunity was given to the accused to advance his defence. So the trial has conducted in one way manner and there is blatant violation of natural justice. Hence according to the appellant, the judgment of the court below is not sustainable. So appellant has sought to set aside the judgment of the learned Judicial First Class Magistrate Court -II, Wadakkanchery.

6. The leaned counsel for the respondent has contended that the original complaint was instituted in 2017. The complainant is loitering all these times to get back his money. The transaction took place more than 13 years back in 2012. So setting aside of the judgment of the court below will affect even the faith of the complaint in the system. Hence the learned counsel for the respondent/complainant has sought for dismissal of the appeal.

7. The points arise for consideration are following;

1. Whether the procedure adopted by the learned Judicial First Class Magistrate Court -II, Wadakkanchery to rush for defence evidence without giving opportunity to the accused for cross-examination of the complainant is correct?
2. Whether the judgment of the court below is liable to be interfered or modified?
3. Finding.

8. The trial court has considered the affidavit in lieu of chief examination filed by the complainant and marked as Exts. P1 to P5 documents to deliver the judgment.

9. Heard both sides.

Point Nos. 1 and 2

10. Admittedly, the trial court did not give the opportunity of cross examination of the complainant to the accused. For that the trial court has relied on the decision of Hon'ble Supreme Court in ***Indian Bank Association and others Vs Union Bank of India Vs others [2014 (2) KLT 788]***. The Hon'ble Supreme Court has given the following directions.

(1) Metropolitan Magistrate / Judicial Magistrate (MM / JM), on the day when the complaint under S.138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.

(2) MM / JM should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address got from the complainant. Court, in appropriate cases, may take the assistance of the police or the nearby Court to serve notice to the accused. For notice of appearance, a short date be fixed. If the summons is received back unserved, immediate follow up action be taken.

(3) Court may indicate in the summon that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, Court may pass appropriate orders at the earliest.

(4) Court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under S.251 CrPC to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under S.145(2) for re - calling a witness for cross – examination.

(5)The Court concerned must ensure that examination - in - chief, cross - examination and re-examination of the complainant must be conducted within three months of assigning the case. The Court has option of accepting affidavits of the witnesses, instead of examining them in Court. Witnesses to the complaint and accused must be available for cross - examination as and when there is direction to this effect by the Court.

11. It seems that by banking on the fourth direction in the judgment, the learned Magistrate has denied the opportunity of cross examination of the complainant to the accused. The complaint was originally filed before the learned Judicial First Class Magistrate Court- I, Wadakkanchery. Before that court, the particulars of the offence were read over to the accused under Section 251 of CrPC, which the accused has denied. The procedure thereafter is contemplated in Section 254 of CrPC. Meanwhile the learned Chief Judicial Magistrate, Thrissur has made over the case to the Judicial First Class Magistrate Court -II, Wadakkanchery. The stage of the complaint was under Section 254 of Cr.,P.C. However it seems that the learned Judicial First Class Magistrate Court-II, Wadakkanchery has reverted to the stage of Section 251 of CrPC and applied the Fourth Direction in the Indian Bank Association case (supra).

12. The practice adopted by the learned Judicial First Class Magistrate Court- II, Wadakkanchery is liable to be deprecated. This is nothing but a shortcut to dispose a complaint which the Hon'ble Supreme Court has never intended while delivering the above five directions. A constructive and purposive interpretation of the five directions together was what actually intended by the Hon'ble Supreme Court. However the learned Magistrate has applied the rule 'pick and choose' for the easy disposal of the complaint. Even the basic principles of natural justice have been violated to the accused. Therefore this court holds that the judgment of the court below is not sustainable and liable to be interfered. Points answered accordingly.

Point No. 3

13. Having been considered the facts, circumstance and the evidence, this court finds that the appeal is meritorious and the prayer in the appeal is inevitable to be allowed.

14. In the result, this appeal is allowed. The judgment of the learned Judicial First Class Magistrate Court- II, Wadakkanchery in CC18 of 2017 dated 07.04.2017 to convict and sentence the accused is set aside. The case is remitted back to the learned Judicial First Class Magistrate Court -II, Wadakkanchery for fresh consideration in accordance with law from the stage of Section 254 of CrPC. The complainant and the accused shall appear before the court below on 29.06.2026. The learned Magistrate may bestow every effort to dispose C.C No. 18 of 2017 within three months from the date of receipt of

records. The office of this court is directed to consign the duly indexed records forthwith to the trial court.

(Dictated to the confidential assistant, typewritten by him, corrected by me and pronounced in open court on this the 15th day of June, 2026)

**Sd/-
JAYAKRISHNAN.G.P
III ADDL.SESIONS JUDGE,
THRISSUR**

APPENDIX: NIL

**Sd/-
JAYAKRISHNAN.G.P
III ADDL.SESIONS JUDGE,
THRISSUR
By Order**

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