

**IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST
CLASS-II, VARKALA**

Present: Sri.Aravind.P, Judicial Magistrate of First Class-II

Dated this the Friday 08th day of May, 2026

Criminal Miscellaneous Petition No.1/2026 in S.T.No.58/2023

Petitioner/Complainant :- V.Nadarajan, S/o Velayudhan, R.J.Nivas
(Paravazhchayil Veedu), Kadakkavoor P.O.

(By Adv: Sri.Mahesh Prabhakar)

Respondent/ Accused :- Ambili Shaji, W/o Shaji,
Malode Veedu, Near Ayantevila Temple,
Kadakkavoor P.O.

(By Advs: Ms.Aswathy.P.S, Ms.Rinku.S and Ms.Sarayu Devi.Y.S.)

This is a petition having been finally heard and the Court on 08.05.2026 delivered the following:

Order

This is a petition filed for accepting the photocopy of the cheque bearing no.204049 of State Bank of Travancore, Kadakkavoor branch as secondary evidence.

2. **Brief averments in the petition are as follows:** Petitioner herein is the complainant in S.T.58/2023. The respondent/accused is a friend of the petitioner/complainant. The respondent reached the residence of the petitioner on 27.06.2007 and borrowed an amount of Rs.5,00,000/- (Rupees Five Lakhs) from the petitioner/complainant. Thereafter, the respondent executed a cheque bearing no.204049 of State Bank of Travancore, Kadakkavoor branch dated 26.03.2008 in favour of

the petitioner and issued the same to the petitioner after signing the cheque.

3. As per the instruction of the respondent, the petitioner presented the cheque for encashment before State Bank of Travancore, Kadakkavoor branch. The cheque was dishonoured due to the reason 'funds insufficient'. Thereafter, the petitioner caused to issue lawyer notice intimating the dishonour of cheque and demanding the repayment of the cheque amount. But the respondent was not ready to pay the same. Thereafter, the petitioner filed complaint before the Judicial First Class Magistrate Court-I, Varkala on 03.06.2008.

4. Even after receipt of summons, the respondent was not ready to appear before the court. So the court issued warrant against the respondent. Even after issuing the warrant, the respondent didn't appear. So the case was removed to the long pending register. Things are being like this, the accused surrendered before the Judicial First Class Magistrate Court-I, Varkala in the year 2025 and obtained bail.

5. While the case was progressing in the Judicial First Class Magistrate Court-I, Varkala, the case was transferred to this court. On appearance of the petitioner and the respondent, this court posted the case for evidence on 13.04.2026.

6. The petitioner kept the cheque bearing no.204049 of State Bank of Travancore, Kadakkavoor branch which was executed and issued by the respondent in a small wooden box. The petitioner was with a firm belief that the cheque is safe in the said wooden box. The petitioner opened the said wooden box on 13.04.2026 and realized that the cheque

was completely damaged due to termite infest. Now the cheque is irrecoverably lost. The cheque was damaged not due to the willful laches or negligence on the part of the petitioner. The respondent obtained bail in the case only in the year 2025 even though the case was filed on 03.06.2008. The petitioner safely kept the cheque for 17 years. Thereafter, the cheque was damaged due to termite infest. If the respondent co-operated with the trial of the case, then the cheque wouldn't have lost.

7. When the petitioner filed the case before the Judicial First Class Magistrate Court-I, Varkala, the original cheque bearing no.204049 of State Bank of Travancore, Kadakkavoor branch is produced before the court. The court verified the original cheque and returned the same. Even though original of cheque bearing no.204049 of State Bank of Travancore, Kadakkavoor branch was lost, the photocopy is still kept in the case bundle. So the present petition is filed for accepting the photocopy of the cheque bearing no.204049 of State Bank of Travancore, Kadakkavoor branch as secondary evidence. Hence the petition.

8. Respondent appeared through learned counsel and filed objection. Brief averments in the objection are as follows: The petition as well as the original complaint is not maintainable either in law or on facts. It is further stated that the present petition is a concocted and belated attempt of the petitioner to overcome the fatal defects in the complaint. Moreover, the attempt of the petitioner is to proceed with the case in the absence of the primary document. The story narrated by the petitioner is improbable. The petition lacks bonafide.

9. The petitioner failed to satisfy the mandatory requirements for adducing secondary evidence under the Indian Evidence Act, 1872 and the corresponding provisions of the Bharatiya Sakshya Adhiniyam, 2023.

10. The photocopy of the cheque bearing no.204049 of State Bank of Travancore, Kadakkavoor branch as secondary evidence can be accepted as secondary evidence u/s 65(c) of the Indian Evidence Act, 1872 and u/s 60 of the Bharatiya Sakshya Adhiniyam, 2023 only, when the original cheque is lost not due to the default or negligence of the petitioner.

11. It is further stated that termite infest is not an unforeseen or unavoidable act and it is a foreseeable risk especially, when a document is kept in an ordinary wooden container. The petitioner failed to produce the original cheque within reasonable time. If the original cheque is not produced, then the respondent will not be able to dispute the signature, examining alterations and questioning material particulars. So acceptance of photocopy of the cheque bearing no.204049 of State Bank of Travancore, Kadakkavoor will cause serious prejudice to the respondent. So the objection of the respondent concluded with a prayer to dismiss the petition.

12. This court heard and perused the records.

13. The case of the petitioner is that the petitioner kept the original of cheque bearing no.204049 of State Bank of Travancore, Kadakkavoor branch in a wooden box for the last 17 years. When the case posted for adducing evidence, he realized that the cheque is damaged due to termite infest. It is not due to the willful laches or negligence on the part of the

petitioner. So the learned counsel for the petitioner prayed for allowing the petition.

14. At the same time, the learned counsel for the respondent vehemently objected and argued that the story narrated by the petitioner is not supported by any evidence. Moreover, if the photocopy of the cheque is accepted, the respondent will not be able to dispute the signature, examine the alterations and question the material facts. So the learned counsel prayed for dismissing the petition.

15. This court considered the contentions in detail.

16. This petition is filed for accepting the photocopy of the cheque bearing no.204049 of State Bank of Travancore, Kadakkavoor branch as secondary evidence. Section 65(c) of the Indian Evidence Act, 1872 and s.60 of the Bharatiya Sakshya Adhiniyam, 2023 are dealt with the acceptance of a secondary evidence. The gist of the above mentioned sections would go to show that for accepting secondary evidence, a litigant has to establish that the primary evidence is lost not due to his willful laches. Here, the petitioner failed to establish the facts which would go to show that the cheque was lost not due to his willful laches.

17. Apart from that, the original complaint is filed u/s 138 of the Negotiable Instruments Act, 1881. Here, this court is bound to provide an opportunity to the respondent/accused to verify the original cheque including the entries such as date, name and amount and even signature. If the original cheque is not produced, the accused will not get such an opportunity. That will cause serious prejudice to the accused. That also can't be done in any manner. So the petitioner failed to establish the

material aspect which sufficient enough to accept the photocopy of the cheque as secondary evidence.

18. Based on the above discussion, this court is having no hesitation to conclude that, the petition is devoid of merits and liable to be dismissed.

In the result, the petition is dismissed.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in Open Court, this the 08th day of May, 2026)

Sd/-

ARAVIND.P

JUDICIAL FIRST CLASS MAGISTRATE-II

APPENDIX:- NIL

Sd/-

JUDICIAL FIRST CLASS MAGISTRATE-II

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**Order in CMP No.1/2026
in ST 58/2023
Dated: 08.05.2026**