

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE
-I. SULTHAN BATHERY

Present:- Sri. Anand Parathara,
 Judicial First Class Magistrate-I,
 Sulthan Bathery.

Wednesday 17th day of May 2023
27th day of Vaisakha, 1945

STC 765/2019

Complainant	: M/s. N V Agencies, Cement Dealer, Mysure- Pulpally road Junction, Kottakunnu, Sulthan Bathery,Wayanad. Represented by its Managing Partner, Lali N Baby, Aged 55 years, W/o N.V Baby, Nirappathu House, Kottakunnu, Sulthan Bathery. (By Adv. M.P Poulouse)
Accused	: Baby K.A, Mithun Agencies, Payyampalli Pot, Mananthavady. (By Adv. Anil P.Bose)
Charge	: U/s 138 of Negotiable Instruments Act
Plea	: Not guilty
Finding	: Guilty
Sentence or order	: Accused is convicted and sentenced to undergo imprisonment till the rising of the court and to pay compensation of ₹5,31,967/- (Five Lakh Thirty One Thousand Nine hundred and Sixty Seven only) with 9% simple interest to the complainant, till the realization, as provided u/s 357(3) of Cr.P.C., of the above amount. In default of payment of compensation, the accused shall undergo simple imprisonment for a period of three month.

This case coming on for the day's proceedings, the court passed the

following:-

J U D G M E N T

This is a private complaint filed by the complainant u/s 190 Cr.P.C. and under section 142 of the Negotiable Instruments Act against the accused for the offence punishable under section 138 of the Negotiable Instruments Act.

2. The complainant's case, in short, is as follows:- The complainant is a Managing partner of a business concern namely ' N V Agencies' at Sulthan Bathery runs Cement Wholesale business. The complainant and the accused are known to each other and having made transactions with each other. The accused purchased Cements from the complainant's shop at Sulthan Bathery and accused owed ₹ 5,31,967/- (Five Lakh Thirty One Thousand Nine hundred and Sixty Seven only) to the complainant in connection with the Cement Dealings. The accused could not repay the money in time to this complainant, and after repeated demands, the accused had issued a cheque bearing No. 15169 of his Bank, State bank of India for a sum of ₹5,31,967/- (Five Lakh Thirty One Thousand Nine hundred and Sixty Seven only) . Accordingly, the complainant presented the said cheque through his Bank, H.D.F.C Bank, Sulthan Bathery branch for collection. But the said cheque was returned unpaid due to the insufficiency of funds in the account of the accused dated 31.05.2019. Thereafter, the Complainant sent the statutory notice dated 14.06.2019 to the accused intimating him of the fact of the dishonour of the cheque and demanding him to pay the cheque amount within 15 days of the receipt of the notice. However, on the receipt of the said notice, the accused did not care

to reply nor did he repay the amount till date. Hence, this complaint is filed alleging commission of offence punishable u/s 138 of the Negotiable Instruments Act, 1881.

3. Upon receiving the complaint my learned predecessor in office took cognizance of the case for the offence punishable under section 138 of the Negotiable Instrument Act and the case was taken on file as STC 765/2019. The accused appeared and he was enlarged on bail. He was furnished with all relevant prosecution records. Particulars of offence were read over and explained to him to which he pleaded not guilty and claimed to be tried. The procedure of summons trial has been adopted in this case.

4. To prove the case of the complainant, the Managing Partner of the Complainant Company was examined as P.W.1 and Ext. P1 to Ext. P6 series were marked.

5. After closing the complainant's evidence, the accused was questioned u/s 313 (1)(b) of the Cr.P.C. He denied all the incriminating circumstances brought out in evidence against him and filed a statement in this regard. Though sufficient time was granted to the accused for adducing defence evidence, no oral or other documentary evidence was adduced from the side of the accused. Heard both sides.

6. Heard both sides.

7. The points that arise for consideration are:-

- i) Did the accused issue Ext.P1 cheque in favour of the complainant company?

- (ii) Was the cheque issued towards the discharge of a legally enforceable liability?
- (iii) Was Ext.P1 cheque dishonoured for the lack of funds in the account of the accused?
- (iv) Did the complainant issue notice to the accused as contemplated under clause (b) of the Proviso to Section 138 of the Negotiable Instruments Act ?
- (v) Did the accused fail to pay the cheque amount within 15 days of the receipt of the notice demanding payment of the cheque amount?
- vi) What are the orders to be passed ?

Point Nos.(i) to (v):-

8. All these points are closely related and for the sake of brevity they are discussed together. PW1 is the managing partner representing the complainant company. She deposed that she is acquainted with the facts of the case and also the accused in this case, who had some financial transactions with the complainant company. The accused had got some cement on credit from the complainant company, he owed ₹ 5,31,967/- to the complainant and the aforesaid amount due was demanded by the complainant on several occasions. Thereafter, the accused handed over Ext.P1 cheque bearing No. 15169 by writing the amount ₹5,31,967/- on the same. Thereafter, PW1 presented Ext.P1 cheque for encashment in H.D.F.C Bank at its branch at Sulthan Bathery. But it was returned stating that there was insufficient funds in the account of the

accused. In the cheque return memo has been produced and marked as Ext.P2.

9. Thereafter, on 14.06.2019, the complainant send Ext.P3 lawyer's notice to the accused by apprising him of the situation and demanded the aforesaid amount. The accused received the notice as evident from Ext.P5 acknowledgement card. After receiving the notice, the accused neither repaid the amount nor did he even send a reply to the said notice.

10. PW1 deposed that the aforesaid act of the accused was intended to deceive him and not to repay the due amount. Ext.P6 series are the bills (invoice) issued by the complainant towards the transaction made with the accused.

11. In his cross examination PW1 deposed that she is the managing partner of the complainant company. She also deposed that the aforesaid firm is not made a party and sent a notice to. She was asked whether the said firm sold cement to one M/s Baby Midhin Agencies. To this question, she answered in the negative. Later she added that that was a clerical mistake. She was further asked with regard to the aspect that in the complaint or Ext P3 notice, the name "Midhun Agencies" is not mentioned. To this question PW1 answered that the name is Baby K. A. and that was a clerical mistake. But no documents are produced in order to prove that both are the same. She also deposed that she has not produced any document to prove that she is the managing partner of the firm. But she added that she is the managing partner of the firm.

12. PW1 deposed that Ext P1 cheque was handed over by the accused at the office of the complainant firm. At that time, PW1 was at the office and the accused handed over the cheque and went. She deposed that she has not stated that the accused affixed his signature in her presence. PW1 was asked whether there is any difference between the signature seen in the postal A/D card and that of in the cheque. To this question, she answered in the negative. PW1 was asked if she has an explanation if it is not discernible from the documents as to who is the proprietor of M/s NV Agencies and that Mr Baby is the proprietor of Baby Midhun Agencies. To this question she answered that it might have happened due to some mistake of the staff who dealt with those matters and PW1 does not remember it exactly. But she deposed that she affixed her signature only after perusing the complaint. She does not remember who went for the collection from that firm. PW1 deposed that the accused affixed his signature and the cheque was handed over while at the office. This aspect is also mentioned in the complaint. PW1 added that the particularities of the transaction can be discerned from Ext. P6 invoice. She was asked whether there are two tick marks in Ext. P2. She denied the same.

13. PW1 was re-examined wherein she deposed that she has been to the business place of the accused and the same is in Payyampilly Tower. She also deposed that it is not mentioned in Ext. P2 memo that there is any difference in the signature of the accused as a reason. PW1 was again cross examined with permission wherein she affirmed that the accused has his business concern in Payyampilly Tower.

14. In this case, the complainant has proved that Ext. P1 cheque was dishonoured on 31-5-2019 due to the insufficiency of funds with the account of the accused. This aspect is evident from Ext. P2 memo. Thereafter, the Complainant sent the statutory notice Ext. P3 dated 14.06.2019 as evident from Ext. P4 postal receipt dated the same. Ext P5 postal Acknowledgement card evinces that the accused received the notice on 17-6-2019. The accused has no case that he has sent a reply notice to the complainant. The alleged transaction between the complainant and the accused is further proved by Ext. P6 series invoices.

15. The accused filed his statement while he was examined under s. 313 CrPC wherein he denied his signature in the cheque. He also stated that there is no document produced to prove that PW1 is the managing partner of the firm and that she has not sent a notice for and on behalf of the complainant company. The accused also denied having bought any cement from the complainant firm. It is seen that lawyers notice is sent in the name of PW1 and also seen mentioned therein that she is sending the same for and on behalf of the complainant company as its managing partner. No reply notice is also seen sent by the accused. Hence that aspect is answered accordingly. No steps seen taken by the accused for proving the alleged difference in the signature. There is only the statement that he is denying the signature in Ext. P1 cheque. It cannot be considered to disprove the case of the complainant.

16. The learned counsel for the accused argued that the accused runs no business concern as M/s Midhun Agencies and that there is no proof that the accused is the proprietor of the aforesaid

concern. The learned counsel for the complainant pointed out that the notice as well as Ext. P5 postal A/d card would show that the accused is the proprietor of Midhun Agencies and also the notice was addressed to him in that capacity. Further, the accused did not sent a reply notice also. The complainant was cross examined at length. PW1 has, by her oral evidence also, proved that the accused failed to pay the cheque amount within 15 days of receipt of Ext. P3 notice. The presumption under s. 139 of the Negotiable Instruments Act is not rebutted also.

17. Therefore, PW1 has successfully proved that the accused failed to pay the amount within 15 days of the receipt of the statutory notice. In the light of the above discussion, point Nos. (i) to (v) are answered in the affirmative and in favour of the complainant.

18. Point No. (vi):- In the light of the answers to the forgoing points, the accused is found guilty of the offence punishable u/s 138 of the Negotiable Instruments Act, 1881 and is convicted of the said offence u/s 255(2) of the Cr.P.C. Considering the nature and circumstance of this case, I find no reason to invoke any benevolent provisions of the Probation of Offenders Act in favour of the accused. Hence, the accused is convicted and he is sentenced to undergo imprisonment till the rising of the court and to pay compensation of an amount ₹5,31,967/- (Five Lakh Thirty One Thousand Nine hundred and Sixty Seven only) with 9% simple interest to the complainant, till the realization, as provided u/s 357 (3) of Cr.P.C, of the above amount. In default of payment of compensation, the accused shall undergo simple imprisonment for a period of three

month. I am of the opinion that this will meet the ends of justice.

19. In the result,

(i) The accused is found guilty of the offence punishable under Section 138 of Negotiable Instruments Act and he is convicted and sentenced to undergo imprisonment till the rising of the court and to pay compensation of ₹5,31,967/- (Five Lakh Thirty One Thousand Nine hundred and Sixty Seven only) with 9% simple interest to the complainant, till the realization, as provided u/s 357(3) of Cr.P.C., of the above amount. In default of payment of compensation, the accused shall undergo simple imprisonment for a period of three month.

(ii) Bail of the accused is cancelled.

(Pronounced by me in open court this the 17th day of May, 2023)

sd/-

JUDICIAL FIRST CLASS MAGISTRATE-I
SULTHAN BATHERY

APPENDIX

Witness examined on the side of the complainant-

PW1 : Laly N Baby

Exhibits marked on the side of the complainant:-

Ext.P1	09.05.2019	Cheque 15169
Ext.P2	31.05.2019	Cheque return memo
Ext.P3	14.06.2019	Lawyer Notice
Ext.P4	14.06.2019	Postal receipt.
Ext.P5	17.06.2019	Acknowledgement Card.
P6series	12.04 18 to 11.10.18	Invoices (10 in numbers)

DEFENCE WITNESS EXAMINED : Nil
EXHIBITS MARKED FOR DEFENCE : Nil
MATERIAL OBJECTS MARKED : Nil

sd/-

JUDICIAL FIRST CLASS MAGISTRATE-I

Statement under Rule 132 of Criminal Rules of Practice

Serial Number : ST 765/2019
Complainant : M/s. N V Agencies Represented
by Laly N Baby

Description of the accused

Name of accused	Age	Father's Name	Calling	Residence	Taluk
Baby K.A	46	Antony	Agriculture	Payyampally	Mananthavady

DATE OF

Occurrence : 17.06.2019
Complaint : 15.07.2019
Apprehension : 06.01.2020
Release on Bail : 06.01.2020
Commencement of trial : 06.01.2020
Close of trial : 15.05.2023
Sentence or order : 17.05.2023
Service of Copy of Judgement
Finding on accused : 17.05.2023
Explanation of delay : No delay

sd/-

JUDICIAL FIRST CLASS MAGISTRATE-I

//True copy//

JUDICIAL FIRST CLASS MAGISTRATE-I
SULTHAN BATHERY

CALENDAR AND JUDGEMENT

District of Wayanad Calendar of cases tried by the Judicial First Class Magistrate-I of
Sulthan Bathery

Date of							
Offence	Report or complaint	Apprehension of accused	Release on Bail	Commencement of trial	Close of trial	Sentence or order	Explanation of delay and remarks
17.06.19	15.07.19	06.01.20	06.01.20	06.01.20	15.05.23	17.05.23	No delay

Judgment in **ST 765/2019** on the file of the Magistrate
of Judicial First class Magistrate -I, Sulthan Bathery

Complainant: M/s. N V Agencies Represented by Laly N Baby

Name of accused	Age	Father's Name	Residence	Taluk
Baby K.A	46	Antony	Payyampally	Mananthavady

Offence : U/s 138 of the Negotiable Instruments Act, 1881.

Finding : Guilty

Sentence or order: Accused is convicted and sentenced to undergo imprisonment till the rising of the court and to pay compensation of ₹5,31,967/- (Five Lakh Thirty One Thousand Nine hundred and Sixty Seven only) with 9% simple interest to the complainant, till the realization, as provided u/s 357(3) of Cr.P.C., of the above amount. In default of payment of compensation, the accused shall undergo simple imprisonment for a period of three month.

Judicial First Class Magistrate- I
Sulthan Bathery

DOCKET

Date of Receipt:

Remarks of the District Magistrate.....

I

Date of Despatch.....

Reply of theMagistrate

Date of despatch:

(of)

From

The Judicial First Class Magistrate-

Sulthan Bathery

To

The Chief Judicial Magistrate,
Kalpetta

The District Magistrate

Through The Sub divisional Magistrate

Case No of ST 765/2019

Date of Judgment: 17.05.2023

Date of Despatch : 18.05.2023