IN THE COURT OF THE III ADDL. SESSIONS JUDGE, KOLLAM

Present : Sri. M.C. Antony, III Addl. Sessions Judge, Kollam

On Thursday the 31st day of July, 2025/ 9th day of Sravanam 1947.

Crl. Appeal. No. 65/2024

From what court the appeal is preferred	The Chief Judicial Magistrate Court – Kollam.
Number of the case in that court	S.T.No. 476/2021
Number of Crl. Appeal	Crl. Appeal No.65/2024
Name and description of the Appellant	Jayadevan .P., aged 50 years, S/o. Parameswaran Pillai, Charuvila Puthen Veedu, Manjakkala P.O. Kunnicode, Kollam Now residing at Santhi Bhavan, Thevalappuram Muri, Puthur Village, Kottarakkara Taluk, Kollam – 691507.
Name and description of the Respondent	1.State of Kerala represented by the District Govt.Pleader, Kollam. 2. M.S. Sajith Kumar, aged 52 years, S/o. Sivadasan Pillai, Sreelakom, Gandhinagar No. 23, Asramam, Kollam East Village, Kollam – 691001.
The sentence and law under which it was imposed in the lower court	The accused is found guilty of the offence u/s. 138 of the Negotiable Instruments Act and is convicted u/s. 255(2) Cr.P.C. He shall pay fine of Rs. 10,00,000/- being double the cheque amount; in default to simple imprisonment for 6 months. Fine amount, if realised, shall be paid as compensation to the complainant u/s. 357 (1) (b) Cr.P.C.
Whether confirmed/modified or	The appeal is partly allowed. The conviction is

reversed and if modified the modification	confirmed. Sentence is modified as follows:- The convict is sentenced to pay fine of ₹6,70,000/-. In default of payment of fine, he shall undergo simple imprisonment for six months. If the fine amount is realised it shall be given to the complainant u/s 357 (1) (b) of Cr.P.C.

Presentation	Filing	Notice issued by court to appear	Bail bond of Appellant has been let out on bail	Appellant ordered to appear	Hearing Date	Order Date
17.04.2024	17.04.2024	23.04.2024	-	-	21.07.2025	31.07.2025

This appeal is coming on for hearing before me upon perusing the memorandum of appeal and the records of evidence and proceedings and upon duly considering the same after hearing the appellant Adv. Sunil C. S & Respondent - (2) Adv. Mangalath K. Harikumar and Public Prosecutor, Kollam I do adjudge and passed the following:

JUDGMENT

This is an appeal preferred by the convict in S.T.No.476/2021 on the file of Chief Judicial Magistrate, Kollam

2. Averments in the complaint in brief are as follows:- Accused was the family friend of complainant. He borrowed a sum of ₹5,00,000/- from the complainant and issued a cheque towards

discharge of said liability. As the said cheque was dishonoured, the complainant filed S.T.98/2016 before the Chief Judicial Magistrate Court, Kollam. The said case was transferred on the question of jurisdiction to Judicial First Class Magistrate Court III, Punalur and again transferred back to the Chief Judicial Magistrate Court, Kollam and re-numbered as S.T.627/2016. A settlement was arrived at in that case and the accused agreed for a sum of ₹5,00,000/ towards full and final settlement of the liability. An agreement was executed in this regard. As per the terms of settlement, a sum of ₹ 1,50,000/- was paid and the accused agreed to pay the balance of ₹ 3,50,000/- within three months from 03/05/2019. He had executed and issued a cheque bearing No.091342 dated 03/08/2019 for the balance amount of ₹3,50,000/-. Accordingly, the said complaint was withdrawn. While so, the accused and his wife borrowed another sum of ₹2,00,000/- from the complainant on the assurance that they would return the amount before 03/08/2019. But, the accused failed to repay the amount as agreed. He repaid a sum of ₹1,12,000/- in irregular installments between 05/08/2019 and 04/09/2019. For the balance amount, the complainant presented the cheque as instructed by the accused and it was dishonoured. When the complainant issued a lawyer notice, the accused sent a reply on

10/02/2020 admitting the liability. The complainant had caused to sent another lawyer notice on 25/01/20201 intimating the proposed legal action. On receipt of the said notice, accused approached the complainant and assured to repay the entire amount with interest on October 20221. Accordingly, the accused issued a post dated cheque bearing No.09143 dated 07/10/2021 for an amount of ₹5,00,000/- in full and final settlement of the entire amount due from him and his wife, drawn on Dhanalekshmi Bank, Cheruthuruthy branch. On presentation of the said cheque for collection it was dishonoured for want of sufficient fund in the account of accused. Thereafter, the complainant caused to sent a registered lawyer notice intimating the dishounour of the cheque and demanding the amount. But, despite receipt of the said notice, accused failed to pay the amount. Hence this complaint under section 138 of the NI Act.

3. Before the trial court PW1 was examined and Exts.P1 to P10 series were marked. Accused was examined u/s.313 (1) (b) of Cr.P.C with respect to the incriminating circumstances appearing in evidence against him. DW1 and DW2 were examined and Exts.D1 to D3 were marked from the side of defence.

4. The trial court vide judgment dated 27/03/2024 convicted the

accused for the offence punishable U/s.138 of the Negotiable Instruments Act and sentenced to pay fine of ₹10,00,000/- being double the cheque amount; in default to simple imprisonment for 6 months. Fine amount, if realised, shall be paid as compensation to the complainant u/s 357 (1) (b) of Cr.P.C.

5. Aggrieved by said judgment of conviction and sentence, accused preferred this appeal on following among other grounds: The judgment of trial court is contrary to law, facts, probabilities and circumstances in the case. The trial court erred in its appreciation of evidence on record. Mere signing of the cheque does not amount to execution. Therefore the presumptions u/ss 118 and 139 of the N.I.Act is not available to the complainant. The evidence of PW1 is contradictory to the pleadings. The cheque in question was given as a security for the previous transaction. There is no legally enforceable debt. The complainant was not having any means to lent the money.

6. Heard both sides.

7. Now the points that arise for consideration are:

1) Whether the complainant has proved the procedural formalities and prerequisites to file a complaint u/s 138 of the NI Act?

2) Whether Ext.P1 cheque was executed and issued

towards discharge of a legally enforceable debt by the accused to complainant?

3) Whether the judgment impugned is liable to be modified, reversed or any way interfered with ?

4) If so, what should be the sentence or order ?

8. **Point Nos. 1 to 3**:- For the sake of convenience, these points are considered together. The case of complainant is that the accused borrowed a sum of ₹5,00,000/- and that a complaint for an offence u/s 138 of N.I. Act was filed owing to dishonour of a cheque issued towards discharge of said liability as S.T.627/2016 on the file of the Chief Judicial Magistrate Court, Kollam. The said complaint was withdrawn on the basis of a compromise entered into between the parties. Ext.P6 is the agreement entered into between the complainant and accused in this regard. As per the said agreement, a sum of ₹1,50,000/- was paid on the date of said agreement and the balance ₹3,50,000/- was agreed to be paid within three months. In the meanwhile, the accused and his wife borrowed another sum of ₹2,00,000/- from the complainant promising to return the entire amount. But, the accused failed to keep his words and he could repay only a sum of ₹ 1,22,000/- in 9 irregular installments. A cheque was also given as security as per the terms of Ext.P6 agreement. The said cheque was also dishonoured which

resulted in sending a lawyer notice on 25/01/2020. To the said notice, the accused sent Ext.P7 reply admitting the dues and seeking further time. Finally, in full and final settlement of the amount due as per the earlier transaction ie., ₹2,28,000/- and subsequent borrowing of ₹ 2,00,000/- along with interest, accused issued Ext.P1 cheque for ₹5,00,000/-. On presentation of the said cheque, it was dishonoured for want of sufficient fund in the account of the accused. Thereafter, the complainant caused to sent Ext.P3 notice. Though the said notice was received by the accused, he did not repay the amount.

9. The complainant was examined as PW1 and he filed affidavit in lieu of examination in chief reiterating the averments in the complaint. There is no serious dispute regarding the transactions between the complainant and accused. Ext.P6 agreement and Ext.P7 reply notice sent by the accused are not disputed. Going by Ext.P6 agreement, the accused settled a case against him by paying a sum of ₹1,50,000/- and agreeing to pay the balance of ₹3,50,000/- and by issuing a cheque as security. The said agreement is dated 03/04/2019. In Ext.P7 reply notice dated 10/02/2020, he admits the transaction referred to in Ext.P6 and further admits that he could repay only a sum of ₹1,22,000/- out of the balance ₹ 3,50,000/-. Thus, he admits that a

sum of ₹2,28,000/- is due in that transaction. Further he admits that he is having yet another transaction with the complainant and he needs time until 10th March 2020 for a complete settlement. Thereafter, the complainant had caused to sent Ext.P8 notice narrating the entire transactions including the subsequent borrowal of ₹ 2,00,000/- and issuance of a cheque bearing No.0557307 in the joint account of accused and his wife and his failure to encash the same as it was an old cheque. According to the complainant, it is after the said notice, accused issued Ext.P1 cheque in full and final settlement of the entire dues. It is pertinent to note that, the accused has not sent a reply either to Ext.P8 notice or to Ext.P3 notice which was sent ahead of filing the present complaint. That is to say, the transaction between the parties and borrowal of the amount by the accused and his wife are not denied. According to the complainant, out of the balance amount of ₹3,50,000/-, the accused paid a sum of ₹1,22,000/- in 9 irregular installments between 05/08/2019 and 04/09/2019. In addition to that, a sum of ₹2,00,000/- was borrowed on 08/07/2019. By computing interest at the rate of 12% per annum for the said 2,28,000/- from 04/09/2019, the date of payment of last installment and 12% interest on the two lakhs rupees from 08/07/2019, a sum of ₹5,01,040/- was arrived at as on the date of

Ext.P8 notice dated 25/01/2021. By rounding the amount at ₹5,00,000/-, the present cheque was issued. Even though learned counsel for accused argued that even if the interest is calculated as mentioned by the complainant, the total amount will not touch the cheque amount of ₹5,00,000/-. But, on calculation of interest at 12 % for the period mentioned in Ext.P8 notice, it is clear that the interest as on the date of Ext.P8 notice would come to ₹75,384/-. Thus, as per said calculation, the amount due as on the date of Ext.P8 notice was more than ₹5,00,000/-.

10. Learned counsel for accused relied on the dictum laid down by the Hon'ble High Court in **Basheer M.H. V. Wheels Auto Finance, Kaloor and Another [2017 (3) KHC 3]** wherein it was held that when interest is calculated over and above the usual interest to arrive at the cheque amount, the said cheque is not enforceable in law. It was a case where the cheque amount was arrived at by computing interest at the normal interest rate of 18% per annum and in addition to that penal interest of 3% per annum. Hon'ble High Court held that an agreement which is against public policy or forbidden by law is void and invalid. As the interest calculated was in violation of the provisions of the Kerala Money Lenders Act exceeding 2% of the above the maximum rate of

interest charged by commercial banks on loans granted by them, the interest calculated is found to be forbidden by law. Therefore, Hon'ble High Court found that the cheque amount arrived at by computing 3% penal interest above the normal rate of interest invalidates the cheque.

11. In the case on hand, the interest calculated is 12% which according to the complainant is on the basis of the consensus between the parties before execution of the cheque. At any rate, there is no penal interest or illegal claim included in the cheque amount. Therefore, the dictum relied on by the accused has no application in the present case and argument of learned counsel for accused does not hold good.

12. At this juncture, it is to be noted that the accused has not disputed the transaction or the signature contained in Ext.P1 cheque. The only defence set up is that it was a blank cheque given at the time of Ext.P6 agreement along with another cheque that was referred to in the agreement.

13. It is to be noted that, there is specific recital in Ext.P6 agreement regarding a cheque bearing No.091342 of Dhanalekshmi Bank given as security. Had there been another cheque issued along with the cheque mentioned therein, certainly, that fact also would have been mentioned in the agreement. Therefore, the said contention by the

accused false flat. In view of the admitted transactions between the parties, the admitted signature contained in Ext.P1, absence of any other circumstance for the complainant to be in possession of the said cheque and in view of the testimony of PW1, I have no hesitation to hold that the complainant proved execution of Ext.P1 cheque.

14. Having proved the execution of the cheque, naturally presumptions u/ss 118(a) and 139 of the N.I.Act comes in aid of the prosecution. It is the duty cast upon the accused to rebut the said presumptions by advancing a probable defence. Learned counsel for accused fervently argued that, as on the date of presentation of the said cheque for collection, the amount due to the complainant was less than the amount in the cheque. He would say that the cheque is dated 07/10/2021 and on the same day a sum of ₹4,500/- was paid by way of Google pay to the complainant as evident from Ext.D1, the statement of bank account of the complainant. DW1 is the Manager of South Indian Bank, Kollam where the complainant is maintaining an SB account. It was through him Ext.D1 was marked. The said account statement was for the period from 10/08/2019 to 28/02/2022. Going by said document, a sum of ₹4,500/- is seen credited to his account from the account of one Jayadevan T. According to him, the said amount is towards the amount

due as per Ext.P1 cheque. So much so, as on the date of presentation of the cheque, the actual amount due was less than ₹ 5,00,000/-. Therefore, no offence u/s 138 of the N.I. Act would lie. He relied on the dicta laid down by the Hon'ble High Court in **Shiju K. V. Nalini and Another [2016 (2) KHC 391]**, **John G. V. Alosious Y. and Another [2010 (2) KHC 705]**, **Joseph Sartho V. G.Gopinathan and Another [2008 (4) KHC 463]**, **Gopinatha Kurup E. V. State of Kerala and Another [2016 KHC 98]**, **Santhosh K.G. V. Nandakumar B. Menon and Another [2016 KHC 109]** and the judgment of Hon'ble Supreme Court in **Dashrathbhai Trikambhai Patel V. Hitesh Mahendrabhai Patel and Another [2022 (7) KHC 61]** to canvas the preposition that if the amount due is less than the cheque amount, no offence u/s 138 of the N.I.Act will lie. Relying on said decisions and in view of the part payment made by the complainant, it was further argued that the complainant ought to have get the part payment endorsed on the cheque before its presentation for collection to get an offence attracted.

15. The trial court, while analyzing this evidence, concluded that by looking at Ext.D1 it cannot be said that the person named Jayadevan, the person from whose account the amount is credited, is the accused herein.

16. The account number referred to in the transaction on 07/10/2021 in Ext.P1 is not the account number of accused in Ext.P1 cheque. Ext.P1 cheque in drawn on Dhanalekshmi Bank; whereas the amount transferred as per Ext.D1 is from an account maintained in State Bank of India. Be that as it may, even assuming that the said amount was transferred from the account of accused, the question is, whether it invalidates Ext.P1 cheque. No doubt, if the amount due is less than the cheque amount, the offence is not attracted.

17. Learned counsel for the complainant vehemently argued that this is not the only transaction between the parties and that there is nothing to conclude that the amount so paid is towards discharge of the liability covered by Ext.P1 cheque.

18. Going by Ext.D1, several other transfers are seen made from the said account for different amount. Of-course, the other transfers are not between the date of cheque and the date of cause of action. But it is evident that repeated payments are being made from the said account to the account of complainant. At this juncture, it is pertinent to note that the accused, in Ext.P7 notice, admits that he is having other transactions also with the complainant. In such circumstance, it is the duty of the accused to prove that the payment of ₹4,500/- allegedly made by the

accused through account transfer is a part payment of the amount covered by Ext.P1. But, as rightly pointed out by learned counsel for the complainant, there is absolutely nothing to show that this amount was paid towards part payment of the said amount or that such a fact was intimated by the accused to the complainant. Interestingly, the accused has not even cared to sent a reply to Ext.P3 notice by taking such a contention. The so called part payment of ₹4,500/- was not brought to the notice of PW1 even at the time of cross-examination. Therefore, I have no hesitation to hold that the amount alleged to have been paid on 07/10/2021 as seen in Ext.D1 is not towards part payment of the amount covered by Ext.P1. So much so, the accused cannot be heard to say that Ext.P1 cheque has no consideration. Thus, he failed to rebut the presumption u/s 118 of the N.I.Act.

19. So far as the presumption u/s 139 of the N.I.Act is concerned, the only defence set up by the accused is that Ext.P1 was a blank cheque given as security at the time of Ext.P6 agreement. As already discussed, the said contention does not hold good for the reason that there is no mention in Ext.P6 regarding issuance of such a cheque as security, especially when there is mention of another cheque issued as security with its details. Therefore, the accused failed to discharge the burden of

rebutting the presumption u/s 139 of the N.I.Act as well.

20. To cap it all, the complainant has proved that Ext.P1 cheque was executed and issued towards discharge of a legally enforceable debt. Going by the judgment impugned, I find no impropriety or illegality in the conclusion arrived at by the trial court and the conviction entered into against the accused.

21. Coming to the sentence, the trial court imposed a fine of ₹10,00,000/- which is double the cheque amount. No doubt, the court is competent to impose a fine up to double the cheque amount. I am also mindful of the fact that the trial court has not sentenced him to imprisonment. However, even by calculating interest at the rate of 9% per annum from the date of cheque till the date of judgment of the trial court it would come to only ₹6,11,129/-. Even if the interest calculated until this day, the interest will come only to ₹6,71,622/-. Therefore, I am of the view that the amount of fine imposed by the trial court is on a higher side. In the facts and circumstances of the case, I am of the view that it is only just to reduce the fine to ₹6,70,000/-.

22. In the result, appeal is partly allowed. The conviction is confirmed. Sentence is modified as follows:- The convict is sentenced

to pay fine of ₹6,70,000/-. In default of payment of fine, he shall undergo simple imprisonment for six months. If the fine amount is realised it shall be given to the complainant u/s 357 (1) (b) of Cr.P.C.

Dictated to the Confidential Assistant, transcribed and typed by her, revised and corrected by me and pronounced in open court on this the 31st July, 2025.

Sd/-
M.C.Antony
III Addl. Sessions Judge

APPENDIX: NIL

Sd/-
III Addl.Sessions Judge.

Typed by : Smitha. N
Compred by : Harikrishnan U.G

Judgment in
Crl. A. No.65/2024
Dated: 31/07/2025