

IN THE COURT OF THE CHIEF JUDICIAL AGISTRATE, KOLLAM

Present: Smt. Anju Meera Birla, Chief Judicial Magistrate.

Dated, Wednesday, the 27th day of March, 2024/7th Chaithra, 1946

ST 476/21.

Complainant	:	M.S.Sajithkumar, aged 52, S/o. Sivasankara Pillai, residing at Sreelakom, Gandhi Nagar No.23, Asramam, Kollam East Village, Kollam.
		(By Adv. Mangalath K.Harikumar)
Accused	:	Jayadevan.P, aged about 50 years, S/o. Parameswaran Pillai, Charuvila Puthen Veedu, Manjakkala P.O., Kunnicode, Kollam and now residing at Santhi Bhavan, Thevalappuram Muri, Puthur Village, Kottarakkara Taluk and working as Village Officer, Kalayapuram Village Office, Kalayapuram, Kottarakara.
		(By Adv.Reshmi.S.Nair)
Offence	:	Punishable under section 138 of Negotiable Instruments Act.
Plea	:	Not Guilty.
Finding	:	Guilty
ORDER	:	Accused is found guilty of the offence under section 138 of the Negotiable Instruments Act and is convicted under section 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 under section 357 (1) (b) Cr.P.C.

DATES OF

Offence	Complaint	Apprehension	Release on bail
28.11.2021	8.12.2021	19.5.2022	19.5.2022

Commencement of trial	Commencement of evidence	Close of trial	Sentence or order
19.5.2022	18.10.2023	26.3.2024	27.3.2024
Period of detention undergone during investigation, inquiry or trial for the purpose of Sec.428 Cr.P.C.			
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This case was finally heard on 26/3/2024 and on 27/3/2024 the Court delivered the following:-

JUDGMENT

This is a complaint filed against the accused alleging an offence punishable under section 138 of the Negotiable Instruments Act.

2. Complaint allegations in short are as follows:- The accused was a family friend of the complainant who borrowed ₹5,00,000 and issued a cheque for the said amount, which when presented, was returned unpaid. The complainant after sending statutory notice filed a complaint against the accused before this court which was taken on file as ST.98/2014. The same was returned for want of territorial jurisdiction on 1/10/2014 after which it was presented before Hon'ble JFCM-3 Punalur on 23/10/2014 which was again transferred to this court and taken on file as ST.627/2016. On non-bailable warrant issued by this court, a settlement was arrived at between the parties whereby it was decided that the accused would pay an amount

of ₹5,00,000 to the complainant as full and final settlement of the amounts between them. In consonance with the same, the accused directly paid amount of ₹1.5 lakhs as part payment to the complainant on 3/5/2019 and agreed to repay the balance amount of ₹3.5 lakhs within 3 months from the date of agreement. A cheque bearing number 091342 dated 3/8/2019 for the balance amount of ₹3,50,000 was executed and issued to the complainant which led to filing of withdrawal petition in ST627/2016 resulting in acquittal of the accused on 1/6/2016. It was assured by the accused that the said cheque would be honoured on 3/8/2019 itself. In the meantime on 8/7/2019, the accused along with his wife went to the residence of the complainant and requested another amount of ₹2,00,000 to be given to the wife of the accused, Smt.Kavita, assuring that the entire amount would be returned before 3/8/2019. Being close friends with the accused and his wife, the complainant gave ₹2,00,000 as a requested. The amounts were not repaid before 3/8/2019 as agreed. However, a total amount of ₹1,12,000 was repaid in 9 irregular instalments of ₹2000/- and ₹30,000 between 5/8/2019 and 4/9/2019. When the complainant demanded full repayment, the accused sought the cheque given as part of the settlement to be presented by the complainant. When the same was so presented, it was dishonoured and returned unpaid on 24/9/2019. A demand notice was caused to be issued on 25/1/2020 to which a reply was sent on 10/2/2020 admitting all the debts due to the complainant from the accused and affixing his official seal as Village officer, Kulathupuzha on it. On 25/1/2021, the complainant sent another legal notice to the accused demanding entire

amounts. After receipt of such notice, on the complainant approaching the accused and his wife at their residence demanding repayment of the entire amount, on 1/10/2021, the accused issued a post dated cheque bearing number 091343 dated 7/10/2021 for an amount of ₹5,00,000 in discharge of the legally enforceable debt as full and final settlement of the entire amount due from the accused and his wife with interest. It was drawn on the account maintained by the accused with Dhanalakshmi bank limited, Cheruthuruthy branch. The complainant presented the cheque for encashment through his account with South Indian bank, Kollam branch on 7/10/2021 itself. But it was dishonoured and returned unpaid on 8/10/2021 stating 'funds insufficient'. A demand notice was caused to be issued for repayment of the cheque amount of ₹5,00,000 by registered post with acknowledgement due on 3/11/2021 which was accepted by the accused on 12/11/2021 on acknowledgement. In spite of the lapse of statutory time, the accused has not repaid the amount. Thus, the accused is alleged to have committed offence punishable under section 138 of the Negotiable Instruments Act.

3. Cognizance was taken of the offence under S.138 of the NI Act. Particulars of offence was read over and explained to the accused when he appeared on process in this case, to which he pleaded not guilty. He claimed to be tried.

4. From the side of the complainant, PW1 was examined and exhibits P1 to P10 were marked in evidence. When the accused was examined on the incriminating circumstances brought out in evidence against him, he denied the same and reiterated his claim of innocence. He stated that on 8/7/2019 when he is alleged to have taken cash from the complainant, he along with his wife were engaged in their official work. He stated that out of ₹3,00,000 owed, ₹3,20,000 had been repaid through several modes of payment. From the side of the accused DW1 and DW2 were examined and exhibits D1 to D3 were marked in evidence.

5. **The following points arise for consideration:-**

- (1) Whether the complaint proves existence of a legally enforceable debt as alleged?
- (2) Whether the complainant proves execution of exhibit P1 by the accused towards discharge of the same?
- (3) Whether the complainant proves compliance of all legal formalities under section 138 of the Negotiable Instruments Act?
- (4) Whether the accused has rebutted presumption, if any, in favour of the complainant?
- (5) Sentence or order?

6. Heard both sides.

7. **Points no. 1 to 4:-** These points are considered together for the sake of convenience. The complainant's case is that on account of amounts owed, a settlement had been arrived at between the complainant and accused which led to giving of exhibit P1 cheque for an amount of ₹5,00,000 dated 7/10/2021 bearing number 091343, which, when presented for collection, was dishonoured. When examined as PW1, the complainant deposed along the same lines as in the complaint and relied on exhibits P1 to P10 series to prove his case.

8. Exhibit P3 can be seen to be notice dated 3/11/2021 in which the counsel for the complainant can be seen to have asserted as regards settlement in relation to ST.627/2016 before this court and another debt due from the accused and his wife Kavita sought on 1/10/2021. It is asserted therein that exhibit P1 cheque was issued for rupees 5,00,000 and dishonoured on 8/10/2021. This notice can be seen to have been received by the accused as is clear from exhibit P4 and also from exhibit P5 which bears the signature of the accused dated 12/11/2021. Exhibit P6 can be seen to be an agreement dated 3/5/2019. In the agreement between both the parties debt of ₹5,00,000 to the complainant is stated, for which 1.5 lakh is asserted in exhibit P6 to have been repaid on 3/5/2019. The remaining ₹3.5 lakh pending is agreed to be repaid for which cheque numbered 091342 was issued promising a repayment within 3 months from 3/5/2019 which would be 3/8/2019. Exhibit P9 details an agreement

made between accused and complainant to repay by 3/8/2019. It is asserted therein that cheque number 091342 was issued as a security dated 3/8/2019 and can be seen to bear the signature of the complainant counsel and the accused counsel. It can be seen detailed therein that out of ₹5,00,000 owed, 1.5 lakh was paid by the accused to the complainant on 3/5/2019 and the remaining 3.5 lakhs would be paid within 3 months making it payable by 3/8/2019 and cheque bearing number 091342 dated 3/8/2019 was issued towards the same. By borrowing ₹2,00,000 on 8/7/2019, the total amount would be seen to be 5.5 lakhs by 3/8/2019, out of which, when 1,12,000 had been paid, there would be an amount of ₹4,38,000 pending.

9. This would account for the demand notice dated 25/1/2020 being issued as specified in the complaint. This can be seen to be the reason behind the reply from the accused to the complainant dated 10/2/2020 admitting settlement of ST.627/2016 for ₹5,00,000. It can also be seen admitted that ₹1.5 lakh was given undertaking to repay the remaining amount within 3 months which would again account to the details given in exhibit P6. It is also admitted that only ₹1,22,000 had been repaid and ₹2,28,000 was owed. It is also admitted therein that there was another transaction which was owed to the complainant whereby time was sought for payment till 10/3/2020. Thus, the amounts owed are admitted. The said reply can be seen signed with the seal of the Village officer, Kulathupuzha with the name of the accused herein and signature endorsed. Exhibit P8 notice can again be seen to contain all of these

details and also the amount of ₹2,00,000 borrowed on 8/7/2019 by the accused and his wife and stating that if the same is not returned, proceedings under section 420 IPC would be initiated. Though this notice does not bear any date, exhibits P9 and P9(a) show that notice is addressed to the accused and his wife respectively dated 28/12/021 and exhibit P10 would show that the same was received by a person named Kavita, Shanti bhavan, Thevalappuram P O, Puthoor which can be seen to be the same address as that of Mr. Jayadevan P in exhibit P7 with the seal as Village officer, Kulathupuzha. These aspects are to be appreciated with the cross examination of PW1 namely the complainant.

10. It can be seen put across to the complainant that after 10/3/2020 amounts were given to the complaint which is deposed by the complainant to be required to be ascertained after going through accounts. The suggestion that almost ₹2,00,000 had been paid to the account of the complainant is seen denied. At the time of cross examination of PW1, it can be seen put across that as per the agreement dated 3/5/2019 a blank signed cheque had been taken from the accused which is seen denied by the complainant and it is also seen stated that the said agreement which can be seen to be exhibit P6 was signed by the counsel for both sides. It is also put across that cheque number 091343 which was immediately following cheque number 091342 had been given in blank as per the demand of the complainant which is also seen denied. Interestingly there is nothing stated as regards when the said cheque

namely exhibit P1 referred to as 091343 had been given in blank when there is absolutely no such statement made either in exhibit P6 or in exhibit P7 reply dated 10/2/2020 from the side of the accused. The suggestion that ₹5,00,000 has been incorrectly entered therein is also seen denied by PW1. It is put across that ₹2.80 lakh had been paid by the accused over several payments and the same has been suppressed by the complainant which is also seen denied by the complainant.

11. It is in this circumstance that exhibit D1 assumes significance. Ext. D1 is marked through the branch manager South Indian Bank, Kollam branch in relation to the account maintained by the complainant with that bank. It is a statement of accounts from 10/8/2019 till 28/2/2022. It is also seen deposed by DW1 that cash had been credited into the account of the complainant when paid through the Google pay of Jayadevan. When appreciating exhibit D1, the fact remains that the payments sought to be accounted are between 10/8/2019 and 28/8/2022 when the complaint is seen filed by 8/12/2021. There is nothing before the court to see that the said Jayadevan stated in exhibit D1 is the same person as the accused. This document is not put across to PW1.

12. This is more so in the light of exhibit D1 stated to have been highlighted by DW1 when on going through the payments stated to have been made by Jayadevan through Google pay by DW1 when it can be seen that there have been certain

payments made by one Jayalakshmi including on 13/7/2021, 5/7/2021, 28/6/2021, 2/5/2021, 13/4/2021. Nothing has been stated as regards payments made against the name Jayalakshmi when DW1 has stated that the highlighted portions were made from the Google Pay of Jayadevan. It can be seen not to be disputed that the name of the wife of the accused is Kavita.

13. It is in the circumstances that the fact that the accused has not chosen to mount the box assumes significance. Though this is not a requirement under law, in the light of the evidence led from the side of the complainant, the presumptions under section 118 and 139 can be seen to be in favour of the complainant whereby the accused was duty bound under law to rebut the presumption. The confusion left by the deposition of DW1 and exhibit D1 one cannot be seen to have been sorted out by the accused herein and the statement cannot be taken at face value in the light of the above.

14. It remains a fact that most of the payments are attributable to beyond filing of the complaint. It is in the circumstance that the evidence of DW 2 is to be appreciated. At no point of time has the plea of alibi been raised by the accused at the time of examination of PW1 for denial to having borrowed the amount on 8/7/2019. Exhibit D2 and D3 are produced to show that the accused was working at the Village Office at Kulathupuzha on 8/7/2019 which is stated to be more than 6 hours away from Kollam. It is in this circumstance that the evidence led from the side of the

complainant as to 8/7/2019 being a Monday as stated by DW2 is to be appreciated.

15. It cannot be seen to be impossible for the accused to travel the said distance on Monday and at the same time to have borrowed amounts on the said day especially in the light of no time having been asked about the same to the complainant as regards the time of borrowing. The time required to travel to a particular place in the light of it being shown from exhibit D2 and D3 as regards the accused having worked in the said village office on the said day is to be appreciated with the fact that the time of such travel as to whether it is in the early hours on 8/7/2019. This cannot be seen ascertained in arriving at a decision that it is possible for the accused to have worked on a Monday at a place like Kulathupuzha.

16. The defence taken cannot be seen to have much relevance even to the extent of preponderance of probabilities as is the requirement under law for rebuttal evidence and the fact that the accused has sought to mount the box to give an explanation when he had a claim of alibi is also to be considered. The explanation given at the time of examination under section 313 CrPC that towards ₹3,00,000/- owed (when no such amount is seen from any of the other documents to be owed) having been repaid for an amount of ₹3.20 lakh is to be considered with the fact that the accused has not adduced any evidence to show such payment by any mode from his side. In these circumstances, the complainant can be seen to have discharged the burden of proof

whereby point numbers 1 to 3 are found in favour of the complainant and point number 4 is found against the accused.

17. **Point no. 5:** In the light of the findings above, this point is found in favour of the complainant. Taking into account the circumstances and nature of case, I am of the opinion that the provisions of PO Act cannot be applied to the case at hand. Taking into account the number of years during which time the complainant had to run from pillar to post and to also have extended monetary support in spite of amounts owed makes it a requirement that double the cheque amount should be imposed as regards the accused.

In the result, the accused is found guilty of the offence under section 138 of the Negotiable Instruments Act and is convicted under section 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 under section 357 (1) (b) Cr.P.C.

Dictated to the Confidential Assistant, typed by her, revised and corrected by me and pronounced in Open Court on this, the 27th day of March, 2024.

Sd/-
CHIEF JUDICIAL MAGISTRATE

Appendix**A. Witnesses examined on the side of the complainant**

Rank	Name	Whether Eye Witness, Police Witness, Expert Witness, Medical Witness, Other Witness
PW1	Sajithkumar	Complainant

B. Defence Witness

Rank	Name	Whether Eye Witness, Police Witness, Expert Witness, Medical Witness, Other Witness
DW1	Deepu.P.S.	Other witness
DW2	Benny	Other witness

C. Court Witness

Rank	Name	Whether Eye Witness, Police Witness, Expert Witness, Medical Witness, Other Witness
Nil	Nil	Nil

List of Prosecution/Defence/Court Exhibits**A. Exhibits Marked on the side of the complainant**

Sl.No.	Exhibit Number	Description
1.	P1	Original cheque bearing No.091343 dated 7/10/2021 dated Rs.5,00,000/- proved through PW1 on 18/10/2023
2.	P2	Memo dated 8/10/2021 proved through PW1 on 18/10/2023
3.	P3	Copy of lawyer's notice dated 3/11/2021 proved through PW1 on 18/10/2023
4.	P4	Postal receipt dated 3/11/2021 proved through PW1 on 18/10/2023
5.	P5	Acknowledgment card proved through PW1 on 18/10/2023
6	P6	Agreement dated 3/5/2019 proved through PW1 on 18/10/2023
7	P7	Reply notice dated 10/2/2020 proved through PW1 on

		18/10/2023
8	P8	Copy of Notice dated 25/1/2021 proved through PW1 on 18/10/2023
9	P9 series	Postal receipts – 2 in numbers proved through PW1 on 18/10/2023
10	P10 series	Acknowledgment cards – 2 in numbers proved through PW1 on 18/10/2023

B. Defence Exhibits

Sl.No	Exhibit Number	Description
1	D1	Statement of account from 10/8/2019 to 28/2/2022 proved through DW1 on 15.11.2023
2	D2	Certificate from Village Officer dated 13.11.2023 proved through DW2 on 19.1.2024
3	D3	Copy of Attendance register proved through DW2 on 19.1.2024

C. Court Exhibits

Sl.No	Exhibit Number	Description
Nil	Nil	Nil

D. Material Objects

Sl.No	Exhibit Number	Description
Nil	Nil	Nil

Sd/-

CHIEF JUDICIAL MAGISTRATE

-/True copy/-

CHIEF JUDICIAL MAGISTRATE