



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 11<sup>TH</sup> DAY OF JUNE 2026 / 21ST JYAISHTA, 1948

CRL.A NO. 897 OF 2007

AGAINST THE ORDER/JUDGMENT DATED 24.05.2007 IN Crl.L.P. NO.277 OF 2007 OF HIGH COURT OF KERALA ORDER/JUDGMENT DATED 24.05.2007 IN Crl.L.P. NO.277 OF 2007 OF HIGH COURT OF KERALA ARISING OUT OF THE JUDGMENT DATED 24.01.2007 IN ST NO.1898 OF 2005 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,KUNNAMANGALAM

APPELLANT/COMPLAINANT:

SREEKUMARAN NAMBOODIRI,  
AGED 50 YEARS, S/O SREEKUMARAN NAMBOODIRI,  
MADHUVANAM, VELLALASSRY P.O., R.E.C. (VIA), CALICUT.

RESPONDENT/ACCUSED:

- 1 U.P.MOHAMMED, AGED ABOUT 45 YEARS,  
S/O NOT KNOWN, ULLATTUPOYILIL HOUSE, PULLALLOOR,  
PARANOR P.O., NARIKUNI (VIA), CALICUT.
- 2 STATE OF KERALA REPRESENTED BY  
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADVS.  
SRI.M.MUHAMMED SHAFI  
SMT.A.PARVATHI MENON  
SRI.P.SANJAY  
SENIOR PUBLIC PROSECUTOR SRI VIPIN NARAYAN.A

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03.06.2026,  
THE COURT ON 11.06.2026 DELIVERED THE FOLLOWING:



**“C.R”**

***A. BADHARUDEEN, J.***

=====  
*Crl.Appeal No.897 of 2007*

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*Dated this the 11<sup>th</sup> day of June, 2026*

Judgment in S.T.1898/2005 dated 24.01.2007 on the files of Judicial First Class Magistrate Court, Kunnamangalam, is under challenge in this appeal filed by appellant, who is the complainant in the above case.

2. Heard the learned counsel for the appellant/complainant and the learned counsel appearing for the 1<sup>st</sup> respondent/accused. Also heard the learned Public Prosecutor representing State of Kerala. Perused the judgment under challenge and the records of the trial court.

3. The complainant launched prosecution alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act ('NI Act' for short) by the accused, when cheque for Rs.90,000/- issued to discharge the liability of Rs.90,000/- alleged to be borrowed by the accused from the complainant got dishonoured when it



was presented for collection.

4. The learned Magistrate ventured the matter and recorded evidence. PW1 was examined. Exts.P1 to P5 were marked on the side of the complainant. No defence evidence was adduced by the accused. The learned Magistrate on appreciation of evidence, acquitted the accused.

5. While seeking interference in the verdict impugned, it is submitted by the learned counsel for the appellant that even though Ext.P3 legal notice was issued within time, consequential to dishonour of Ext.P1 cheque, the same was returned with endorsement 'unclaimed' and the returned notice was marked as Ext.P5. The learned counsel for the appellant submitted that despite tendering of Ext.P5 the learned Magistrate found that there was no legal notice in the eye of law, as the accused denied his address shown in Ext.P3 and Ext.P5. According to the learned counsel for the appellant, the said finding is erroneous since issuance of notice in the correct known address by the complainant to the accused would suffice the requirement of notice under Section 138(1)(b) of the NI Act. He also pointed out that the trial court found a minor improbability in the evidence of PW1 to disbelieve him and to hold that the complainant



failed to prove the transaction and execution of the cheque. According to the learned counsel for the appellant, an anomaly was found by the learned Magistrate in the evidence of PW1. The anomaly is that the complainant averred in the complaint that he and the accused were known to each other but when he filed chief affidavit he stated that the accused was his friend. According to him, the same is not a reason to discard the evidence of PW1 to prove the transaction which led to issuance of Ext.P1 cheque, which, in fact, failed to be shaken during cross examination. Therefore the verdict would require interference.

6. The learned counsel for the 1<sup>st</sup> respondent/accused supported the verdict and contended that there was no legal notice in this matter and the transaction was failed to be proved by the appellant. Thus the verdict is liable to be sustained.

7. Points arise for consideration are:

(i) Whether the learned Magistrate is right in holding that the accused is not guilty of the offence under Section 138 of the N.I Act?

(ii) Is it necessary to interfere with the judgment in any manner?



(iii) The order to be passed?

8. In this case, the case advanced by the appellant is that the accused borrowed Rs.90,000/- on 25.04.2005 and in discharge of the said liability he had issued cheque dated 05.01.2005 for the said amount drawn on Lord Krishna Bank, Kozhikode Brnach. Though the complainant accepted the cheque in lieu of cash and presented it for collection, it was dishonoured with the endorsement 'Funds Insufficient' and accordingly demand notice was issued. But the demand notice was returned with endorsement "unclaimed". Accordingly, the complainant would allege that the accused committed the offence punishable under Section 138 of the N.I Act.

9. In order to prove the case of the complainant, the complainant himself examined as PW1. He deposed that on 25.04.2005 the accused had borrowed Rs.90,000/- from him and when he demanded back the same after 3 months, the accused issued Ext.P1 cheque in discharge of the said liability. He also deposed about presentation of the cheque for collection, its dishonour for want of funds, issuance of demand notice and its return with endorsement 'unclaimed'. Apart from Ext.P1



cheque, Ext.P2 dishonour memo, Ext.P3 copy of lawyer notice, Ext.P4 postal receipt and Ext.P5 returned notice were tendered in evidence through PW1. The key defence suggested during cross examination of PW1 is that the accused borrowed Rs.5,000/- from the nephew of the complainant who was working along with the accused in the Excise Department and he had issued a blank cheque for the said transaction. The further case is that even though he had repaid Rs.8,000/- in full discharge of the said liability, including the interest thereof, the cheque was not returned and the same was misused for the purpose of this case.

10. The learned Magistrate while evaluating the evidence of PW1 observed that in a criminal case the burden of proof lies on the complainant and only on proof of the same, presumption under Section 139 of the N.I Act would get attracted. Going through the evidence of PW1, he had fully supported the transaction as averred in the complaint and his evidence regarding borrowing of Rs.90,000/- by the accused on 25.04.2005 and the consequential issuance of Ext.P1 cheque after 3 months are not at all shaken, during cross-examination. In a prosecution alleging commission of the offence punishable under Section 138 of the



N.I Act, an initial burden is cast upon the complainant to prove the transaction and the execution of the cheque so as to get the benefit of presumption under Section 139 of the N.I Act. In the instant case, the evidence of PW1, clearly established the transaction which led to execution of Ext.P1 cheque and a mere suggestion by way of putting another transaction and its alleged discharge by itself, are insufficient to disbelieve the version of PW1, in a case where the accused did not adduce any evidence and failed to examine the nephew of the complainant to prove the case advanced by him. It is very pertinent to note that when a party pleads discharge of a liability either in civil case or criminal case, it is his bounden duty to establish the same by cogent and reliable evidence. In this case, the accused adduced no evidence to prove the plea of discharge of the liability he had admitted and no evidence otherwise forthcoming to find the discharge. Coming to the finding of the learned Magistrate regarding absence of legal notice in this case, the same appears to be patently illegal. In the instant case, when Ext.P5 notice (Ext.P3 is its office copy) was issued, the same was returned with endorsement 'unclaimed'. This endorsement would indicate that the reason for return of



the notice was refusal on the part of the accused/addressee to accept the same. It is pertinent to note that as pointed out by the complainant, when summons was issued to the accused in the address shown in the notice he had accepted the same and appeared before the court as a sequel thereof. In fact, issuance of notice under Section 138(b) of the N.I Act and acceptance of the same by the accused are two separate events, though service of notice is having relevance to count the limitation period for filing the complaint. Coming to issuance of the demand notice contemplated under Section 138(b) of the N.I Act, when notice would be issued in the known address of the drawer of the cheque, the same would suffice the requirement of notice. In the decision reported in [2007(3) KLT 77], *Alavi Haji v. Palappetty Muhammed*, the Apex Court categorically held that if demand notice would be sent in the correct address of the drawer of the cheque by registered post, the notice deemed to be served. Thus issuance of notice in the known address of the drawer of the cheque would suffice the requirement of notice under Section 138(b) of the N.I Act. When notice was issued to the drawer of the cheque and the same returned with endorsement 'unclaimed', unless the accused is able to establish that the notice was not



issued in his address by convincing evidence, return of the demand notice with endorsement 'unclaimed' would suffice the requirement of issuance of notice as well as its deemed acceptance. In view of the above, the finding of the learned Magistrate in this regard is also liable to be reversed. Regarding the anomaly in the evidence of PW1 by stating his relationship with that of the accused as a person known to him in the complaint and the accused as his friend during evidence, the same is of least significance since both versions only indicate the acquaintance between them to justify the transaction. Therefore the said finding of the learned Magistrate is also reversed. In view of the aforesaid discussion the verdict would require interference. In the instant case, the evidence of PW1 proved the initial burden cast upon the complainant and therefore the complainant would very well get the presumption under Section 139 of the N.I Act, which was failed to be rebutted by the accused. Therefore, the accused found to have committed the offence punishable under Section 138 of the N.I Act.

11. In the result, the appeal is allowed. The verdict impugned is set aside and it is found that the accused is guilty for commission of offence punishable under Section 138 of the N.I Act and he



is sentenced to undergo simple imprisonment for a day till rising of court and to pay fine of Rs.1,30,000/- (Rupees One lakh thirty thousand only) and in default of payment of fine, to undergo default imprisonment for a period of four months. The 1<sup>st</sup> respondent/accused is directed to appear before the Magistrate Court on 07.07.2026 to undergo the sentence or else the learned Magistrate is directed to execute the sentence.

Registry is directed to forward a copy of this judgment to the jurisdictional court for information.

*Sd/-*

**A. BADHARUDEEN, JUDGE**

*rtr*