



2026:KER:26925

CRL.MC NO. 1782 OF 2026

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“C.R.”

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 26TH DAY OF MARCH 2026 / 5TH CHAITHRA, 1948

CRL.MC NO. 1782 OF 2026

AGAINST THE ORDER/JUDGMENT DATED IN ST NO.5023 OF 2025 OF
JUDICIAL MAGISTRATE OF FIRST CLASS ,PALA

PETITIONER/ACCUSED:

CLARA DOMINIC,
AGED 65 YEARS
MANNUPARAMBIL HOUSE, PALAMBRA P.O, KANJIRAPPALLY,
KOTTAYAM, PIN - 686518

BY ADV SRI.C.S.BISSIMON

RESPONDENTS/COMPLAINANT:

- 1 TOMY EAPEN ,
AGED 69 YEARS
ANJERIYIL HOUSE, CHERPPUNKAL P.O, KIDANGOOR VILLAGE,
MEENACHIL TALUK, PIN - 686584
- 2 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTER ,
STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTER HIGH
COURT OF KERALA, ERNAKULAM, PIN - 682031
- 3 SECRETARY, KANJIRAPPALLY CENTRAL SERVICE COOPERATIVE
BANK LTD 1537
KANJIRAPPALLY CENTRAL SERVICE COOPERATIVE BANK LTD
1537, KANJIRAPPALLY P.O, KOTTAYAM DISTRICT, PIN -
686507



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BY ADVS.
SHRI.JACOB SEBASTIAN
SMT.SHAMSEERA. C.ASHRAF
SHRI.WINSTON K.V
SMT.ANU JACOB
SMT.ANJANA KRISHNAN
SHRI.VINCENT C. J.

OTHER PRESENT:

SR PP SMT SEETHA S

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
26.03.2026, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**“C.R.”****C.S.DIAS, J.**

CRL.MC NO. 1782 OF 2026

Dated this the 26th day of March, 2026**ORDER**

The petitioner is the accused in S.T. No. 5023 of 2025 on the file of the Court of the Judicial First Class Magistrate, Pala (“Trial Court”, for short). The case arises from Annexure–A2 complaint filed by the 1st respondent, alleging the commission of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (“N.I. Act”, for brevity).

2. The petitioner contends in the Criminal Miscellaneous Case, inter alia, that Annexure–A1 document produced along with the complaint is not a cheque, but a withdrawal slip of the Kanjirapally Central Service Co-operative Bank Ltd. (hereinafter referred to as “Society”). According to the petitioner, the 1st respondent



had surreptitiously taken possession of the said withdrawal slip, manipulated it into a cheque, presented it for encashment, and, upon its dishonour, filed the present complaint. It is further urged that the Society does not fall within the definition of a “banker” under Section 3 of the N.I. Act and is not licensed by the Reserve Bank of India. A withdrawal slip does not answer the description of a “cheque” within the meaning of Section 6 of the N.I. Act. Hence, the very foundation of the prosecution is legally untenable, warranting the quashing of the complaint.

3. I have heard Sri. C.S. Bissimon, learned counsel appearing for the petitioner; Sri. Jacob Sebastian, learned counsel appearing for the 1st respondent; and Smt. Seetha S., learned Senior Public Prosecutor. Having regard to the nature of the controversy, and since the Society is only a formal party, notice to the 3rd respondent Society is dispensed with.

4. The learned counsel for the petitioner reiterates



that, in view of Section 6 of the N.I. Act read with Section 5(b) of the Banking Regulation Act, 1949 (for short, “the Regulation Act”), a withdrawal slip cannot be construed as a cheque, and therefore, the complaint under Section 138 of the N.I. Act is not maintainable in law.

5. On the contrary, the learned counsel for the 1st respondent submits that Annexure–A1 is, in substance and effect, a cheque drawn on the 3rd respondent, which answers the description of a “banker” within the meaning of Section 3 of the N.I. Act read with Section 5(b) of the Regulation Act. It is further contended that co-operative societies engaged in banking activities are also encompassed within the statutory framework governing banking institutions.

6. In the backdrop of the rival submissions, the questions that arise for consideration are: (i) whether a withdrawal slip drawn on a co-operative society partakes the character of a “cheque” within the meaning of Section 6



of the N.I. Act; and (ii) whether the complaint is maintainable in law.

7. The aforesaid issue is no longer res integra. The Karnataka High Court, in **Upendra Kumar v. Don Finance Corporation, Mangalore** [2009 KHC 5514], has held that the expression “banker” under Section 3 of the N.I. Act is of wide amplitude and is not confined to entities governed strictly by the Banking Regulation Act. The definition is inclusive in nature and extends to any person or institution acting as a banker. It was further held that co-operative societies carrying on banking business, notwithstanding the absence of a profit motive or formal licensing under the Regulation Act, would fall within the ambit of a “banker” for the purposes of the N.I. Act. Consequently, instruments drawn on such institutions, including withdrawal slips operating as payment mandates, cannot be excluded from the sweep of the Act merely on technical nomenclature.



8. A Division Bench of this Court, in **Gandhigram Agro Based Industrial Co-operative Society Ltd. v. Marangattupilly Service Co-operative Bank Ltd. and Others** [2019 (3) KHC 60], after referring to the law declared by the Hon'ble Supreme Court in a catena of precedents, has emphatically held that the essence of "banking" lies in the acceptance of deposits from the public repayable on demand or otherwise, coupled with the facility of withdrawal by instruments such as cheques, drafts, or orders. It is held that co-operative societies engaged in such activities are, in substance, performing banking functions. The mere absence of a licence under Section 22 of the Regulation Act does not detract from the character of the activity as banking business, nor can such absence be invoked as a defence to evade legal obligations arising therefrom.

9. In the light of the authoritative pronouncements in the above-referred decisions, the contention advanced by



the petitioner that the Society is not a “banker” and that the instrument in question cannot be treated as a cheque is devoid of any merit. The substance of the transaction, and not its form or nomenclature, is determinative. If the instrument operates as a mandate for payment drawn on an account maintained with an institution carrying on banking functions, it would fall within the ambit of the N.I. Act.

10. Viewed thus, the challenge raised by the petitioner to the maintainability of the complaint cannot be sustained. This Court does not find any exceptional circumstance warranting the exercise of its inherent jurisdiction to quash the proceedings under Section 528 of the Bharatiya Nagarik Suraksha Sanhita.

Resultantly, the Criminal Miscellaneous Case fails and is accordingly dismissed. However, it is made clear that the petitioner would be at liberty to raise all other legally permissible defences before the Trial Court. The Trial Court shall consider and dispose of the complaint on its own



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merits, and in accordance with law, untrammelled by any observation in this order on the questions considered above.

Sd/-

C.S.DIAS, JUDGE

ams/dkr



APPENDIX OF CRL.MC NO. 1782 OF 2026

PETITIONER ANNEXURES

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| Annexure A1 | COPY OF THE DOCUMENT NO 25833 DATED 01-07-2025 ISSUED BY KANJIRAPPALLY CENTRAL SERVICE CO-OPERATIVE BANK LTD.NO.1537 |
| Annexure A2 | COPY OF THE COMPLAINT IN ST 5023/2025 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT PALA DATED 18-9-2025 |
| Annexure A3 | COPY OF THE COVERING LETTER DATED 08-08-2025 ISSUED BY THE FEDERAL BANK |
| Annexure A4 | COPY OF THE MEMORANDUM DATED 1-8-2025 ISSUED FROM KANJIRAPPALLY CENTRAL SERVICE CO-OPERATIVE BANK |