



2026:KER:33932

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 18<sup>TH</sup> DAY OF MAY 2026 / 28TH VAISAKHA, 1948

CRL.A NO. 1964 OF 2008

AGAINST THE JUDGMENT DATED 15.06.2007 IN CC NO.588

OF 2005 OF JUDICIAL MAGISTRATE OF FIRST CLASS -IV,

NEYYATTINKARA

APPELLANT/COMPLAINANT:

WILFRED JOSE  
S/O.DENNISON, KUNNUVILA VEEDU  
VADAKODU DESOM, PERUMPAZHATHOOR VILLAGE.  
BY ADVS.  
SRI.R.T.PRADEEP  
SHRI.V.VIJULAL

RESPONDENTS/ACCUSED AND STATE:

- 1 JAYAPAL  
S/O.SREEDHARA PANICKER  
T.C.36/1786, PRASANTH BHAVAN, V.K.K.NAGAR,,  
VALLAKKADAVU, FROM SREE NILAYAM,  
PULIYADACHANVILA,, KAZHAVOOR DESOM,  
KANJIRAMKULAM VILLAGE.
- 2 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.

SRI.RENJIT GEORGE, SR.PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON  
07.04.2026 AND THE COURT ON 18.05.2026 DELIVERED THE  
FOLLOWING:



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**JUDGMENT**

Dated this the 18<sup>th</sup> day of May, 2026

Judgment of acquittal dated 15.06.2007 in C.C.No.588/2005 on the files of the Judicial First Class Magistrate Court-IV, Neyyattinkara, is under challenge in this appeal filed at the instance of the appellant, who is the complainant in the above case. The 1<sup>st</sup> respondent herein is the accused in the said case. The 2<sup>nd</sup> respondent herein is the State of Kerala, represented by the learned Public Prosecutor.

2. Heard the learned counsel for the appellant/complainant and the learned Public Prosecutor in detail. Perused the judgment under challenge and the records available.

3. I shall refer the parties in this appeal as '*complainant*' and '*accused*' hereinafter, for easy reference.



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4. Coming to the genesis of the case, the complainant had filed a complaint before the Judicial First Class Magistrate Court-IV, Neyyattinkara, alleging that the accused, who is the 1<sup>st</sup> respondent herein, committed offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act' for short). The precise allegation is that when the complainant presented Ext.P1 cheque dated 10.02.2004 for ₹3,00,000/- (Rupees three lakh only), issued by the accused in favour of the complainant to discharge liability for the said sum, the same got dishonoured for want of funds. Although the matter of dishonour of the cheque was intimated to the accused and demand for payment of the amount covered by Ext.P1 cheque, the accused failed to repay the amount.

5. The learned Magistrate tried the matter. During trial, PW1 was examined and Exts.P1 to P10 were



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marked on the side of the complainant. No defence evidence was adduced, though opportunity was provided to the accused to adduce defence evidence.

6. While assailing the verdict impugned, it is submitted by the learned counsel for the complainant that the learned Magistrate had taken a hyper-technical stand in evaluating the evidence of PW1, which would categorically suggest borrowing of ₹3,00,000/- by the accused from the complainant on 01.02.2004 and issuance of Ext.P1 cheque for its discharge. According to the learned counsel for the complainant, the evidence of PW1 shows that the complainant discharged his initial burden in the matter of transaction which led to execution of Ext.P1 cheque and thereby the complainant could very well avail the presumptions under Sections 118 and 139 of the NI Act. It is also pointed out that the presumptions in no way rebutted by



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the accused with the aid of evidence available. Therefore, the verdict impugned would require interference.

7. The learned Public Prosecutor also supported the verdict of the learned Magistrate.

8. Now the question arises for consideration are :

1. Whether the learned Magistrate went wrong in finding that the complainant failed to prove the transaction led to Ext.P1 cheque?
2. Whether the learned Magistrate is justified in acquitting the accused/1<sup>st</sup> respondent herein?
3. Whether the impugned verdict of the trial court would require interference?
4. Order to be passed?

9. Point Nos. 1 to 4

In this matter, it is submitted by the learned counsel



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for the accused that the learned Magistrate relied on the evidence of PW1, which is the sole oral evidence available, while concluding that the accused himself wrote and signed the cheque, and the accused succeeded in establishing that the transaction was something otherwise than as deposed by PW1. The learned Magistrate addressed the question as to whether Ext.P1 cheque was issued by the accused to the complainant towards the discharge of any legally enforceable debt, and also whether the contention raised by the complainant, that the accused had committed offence punishable under Section 138 of the NI Act, had been proved. Finally, it was found by the learned Magistrate that the accused himself wrote the cheque and signed the same. Then it was found by the learned Magistrate that the accused succeeded in bringing home that the transaction was otherwise than what had been spoken by the complainant.



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On this finding, the learned Magistrate acquitted the accused.

10. On perusal of the evidence of PW1, it could be gathered that PW1 filed affidavit in lieu of Chief Examination and averred that the accused issued Ext.P1 cheque dated 10.02.2004 for ₹3,00,000/- in discharge of ₹3,00,000/- borrowed by the accused from the complainant. He also deposed about the presentation of Ext.P1 cheque before the Catholic Syrian Bank and its dishonour with endorsement 'funds insufficient' as per Ext.P2 dishonour memo dated 13.02.2004 and Ext.P3 original intimation memo dated 17.02.2004. His version further is that though he had informed the accused about the dishonour of Ext.P1 cheque by issuing Ext.P4 notice on 20.02.2004, the accused failed to repay the amount, and the accused even did not accept the same. Ext.P4 is the copy of legal notice, Ext.P5 is the postal receipt, and Ext.P6 is the unserved legal notice. In the



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affidavit in lieu of Chief Examination, PW1 stated that Ext.P1 was written and brought by the accused and executed the same in the presence of PW1. During cross-examination, he reiterated the same statement. Even though the source to advance ₹3,00,000/- as on 31.01.2004 was challenged by the accused, subsequently, the complainant produced Ext.P7 to Ext.P10. Ext.P8 is the statement of accounts in the name of the complainant from 01.01.2000 to 04.05.2007. However, as on 31.01.2004, the amount available in his credit was ₹205. Coming to Ext.P7, the same is a composite statement of the Hong Kong and Shanghai Banking Corporation (HSBC), which would depict that a personal loan was opened on 22.09.2003 and ₹3,20,000 (Rupees three lakh twenty thousand only) was obtained by the complainant on the said date. However, the learned Magistrate was not inclined to accept the evidence.



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11. Now it is necessary to address how the complainant in a prosecution alleging commission of offence punishable under Section 138 of the NI Act would be able to discharge his initial burden in the matter of transaction and execution of cheque alleged to be dishonoured, so as to avail the presumptions under Sections 139 and 118 of the NI Act. When the complainant offers himself as a witness and deposes about his case by eliciting the transaction and the mode of execution of the cheque by stating that the accused brought the cheque, written, signed and executed before him, the said version failed to be shaken during cross-examination, this evidence is the substantive evidence to be relied on by the courts to hold that the complainant discharged his initial burden. The said substantive evidence should not be disbelieved by a court of law unless by cross-examination or otherwise the evidence found to be not



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acceptable for which reasons to be recorded in writing. Here, the case of the accused is that Ext.P1 cheque reached the hands of the complainant through one Radhakrishnan. The accused did not adduce any evidence to prove the said contention, and he even failed to examine the said Radhakrishnan as a witness. In paragraph No.11 of the impugned verdict, the learned Magistrate found that the reasonable conclusion was that “the accused himself wrote the cheque and signed the same”. Thereafter, it was found that during cross-examination, it was stated that the accused written and signed the cheque, therefore, his explanation during re-examination that what was meant by him was that the cheque was brought, written and signed in his presence was not accepted by the learned Magistrate. In the instant case, on scanning the evidence of PW1, the stand taken by the learned Magistrate is found to be unacceptable, rather



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not digestible to prudence. Once the learned Magistrate found that the accused himself wrote the cheque and signed the same, how the learned Magistrate could be justified in holding that the transaction involved was something otherwise and as not spoken by the complainant without support of any materials to enter into such a finding?. When a Magistrate finds that the cheque was wrote and signed by the payer, the entries therein showing the issuance of the cheque in the name of the payee (complainant) also is well established.

12. As already noted, it is well settled law that in a prosecution alleging commission of offence punishable under Section 138 of the NI Act, the initial duty is caste upon the complainant to prove the transaction that led to execution of the cheque and once the initial burden is discharged satisfactorily, then the presumptions under Sections 118 and



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139 of the NI Act would be available to the complainant, unless and otherwise the accused is able to rebut the presumptions by relying on the evidence already on records or by adducing independent evidence.

13. In the instant case, the finding of the learned Magistrate that the evidence of the complainant is insufficient to find the transaction and execution of Ext.P1 cheque cannot be justified for the reasons discussed. Therefore, the verdict impugned would require interference and the appeal succeeds accordingly.

14. In the result, this appeal stands allowed and the judgment of acquittal rendered by the trial court stands set aside. Consequently, the accused/1<sup>st</sup> respondent is convicted for the offence punishable under Section 138 of the NI Act and the accused/1<sup>st</sup> respondent is sentenced to undergo simple imprisonment for a period of one day till



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rising of the Court and to pay fine of ₹4,50,000/- to the complainant. Out of ₹4,50,000/- ₹4,25,000/- shall be given as compensation to the complainant under Section 357(1)(b) of the Code of Criminal Procedure. In default of payment of fine, the accused/1<sup>st</sup> respondent shall undergo default imprisonment for a period of six months. On payment or realisation of the entire fine amount, ₹25,000 shall go to the State Exchequer.

15. The accused is directed to surrender before the Judicial First Class Magistrate Court-IV, Neyyattinkara, to undergo the sentence at 11.00 am on 29.05.2026 and on failure to do so, the learned Magistrate is directed to execute the sentence imposed by this Court, as per law, without fail.



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Registry is directed to forward a copy of this judgment to the Judicial First Class Magistrate Court-IV, Neyyattinkara, forthwith.

**Sd/-  
A. BADHARUDEEN  
JUDGE**

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