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CRL.A NO. 1991 OF 2007

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 2ND DAY OF JUNE 2026 / 12TH JYAISHTA, 1948

CRL.A NO. 1991 OF 2007

AGAINST ORDER/JUDGMENT DATED IN CC NO.1017 OF 2005
OF JUDICIAL MAGISTRATE OF FIRST CLASS -I (FOREST
OFFENCES), THODUPUZHA

APPELLANT/COMPLAINANT:

MARY JAMES
W/O.JAMES, KUNNATHU HOUSE,
CHEENIKUZHI, UDUMBANNOOR VILLAGE, THODUPUZHA.

BY ADV SRI.UNNIKRISHNAN.V.ALAPATT

RESPONDENTS/ACCUSED AND STATE:

- 1 GIGI JOSE, EDANACKAPARAMBIL, NEYYASSERY P.O.,
NEYYASSERY VILLAGE, THODUPUZHA.
- 2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
BY ADVS.
SRI.RENJITH B.MARAR
SRI.L.RAJESH NARAYAN
SR PP VIPIN NARAYAN .A

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
02.06.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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JUDGMENT

Dated this the 2nd day of June, 2026

The complainant in C.C.No.1017/2005 on the files of the Judicial First Class Magistrate Court-I, Thodupuzha has filed this criminal appeal, challenging the judgment of acquittal dated 27.11.2006 in the above case.

2. Heard the learned counsel appearing for the appellant/complainant and the learned Public Prosecutor appearing for the 2nd respondent–State of Kerala. No representation for the 1st respondent/accused, despite service of notice.

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

4. Coming to the prosecution allegation, Ext.P1 cheque dated 20.09.2005 for ₹55,000 (Rupees fifty five thousand only), allegedly issued by the accused to the complainant in discharge of the said liability, when presented



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for encashment through Kodikulam Service Co-operative Bank got dishonoured for two reasons, viz., (1) *alteration in date* and (2) *requires full signature* as per Ext.P2 memo dated 06.10.2005. Despite issuance of legal notice, the accused failed to repay the amount and accordingly, the complainant preferred the complaint alleging commission of offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act' for short) by the accused.

5. The trial court took cognizance for the said offence and proceeded with trial. During trial, PW1 was examined and Exts.P1 to P6 were marked on the side of the complainant. No evidence let in by the accused.

6. The trial court, on appreciation of evidence, acquitted the accused, and it was founded by the learned Magistrate that even though there was insufficient funds in the account of the drawer to honour the cheque, the cheque was dishonoured for the reasons viz., '*alteration in the date*'



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and '*requires full signature*'. Accordingly, it was found that Ext.P1 is a void cheque because of material alteration and consequently, criminal prosecution could not succeed.

7. The learned counsel for the appellant/complainant argued that even though the cheque was dishnoured for the reasons, viz., (1) *alteration in the date* and (2) *requires full signature*, as per Ext.P2 memo dated 06.10.2005, the correction in the date in Ext.P1 was made by the drawer/accused at the time of issuance of the cheque and it was so specifically stated in the complaint. That apart, the liability to the tune of ₹25,000 and issuance of Ext.P1 cheque during 2004 were admitted by the accused by raising plea of discharge, insofar as ₹25,000 admittedly received by him during 2004. Therefore, the case advanced by the complainant is liable to be believed based on the evidence given by PW1, so as to avail the benefit of presumption under Section 139 of the NI Act in favour of the complainant. He also submitted that there is no material



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alteration in the cheque to make the same as void as found by the learned magistrate.

8. In view of the argument advanced, the questions arise for consideration are:

1. What is the legal effect of correcting the date of cheque without an authentication by putting signature by the drawer of the cheque?
2. If any material alteration is found in a Negotiable Instrument, what is the legal consequence?
3. Whether the trial court is right in holding that the accused did not commit any offence under Section 138 of the NI Act since Ext.P1 is a void instrument?
4. Whether the trial court verdict would require interference?
5. Order to be passed?

9. Point Nos.1 to 5

On perusal of Ext.P2 dishonour memo, the reasons for dishonour of cheque are twofold, viz., (1) *alteration in date* and (2) *requires full signature*. On perusal of Ext.P1 cheque, it could be seen that '05' showing the year as 2005



has been altered and re-written after erasing the earlier date. The specific case of the accused is that the cheque was issued during the year 2004 and it was materially altered by correcting the figure '04' as '05' and the same had no authentication by him. In this connection, it is relevant to refer Section 87 of the NI Act, which deals with material alteration. Section 87 of the NI Act reads as under:

“87. Effect of material alteration.—Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

It is also provided that any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof. So as per Section 87 of the NI Act, material alteration of a negotiable instrument by altering the date renders the same void as against any one who is a party thereto at the time of making



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such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties. Thus, if there is alteration in the date of the cheque, the same should be authenticated by the drawer, and if there is alteration after the sharing of the common intention of the drawer and the drawee to do so, as authenticated by the drawer by putting his full signature on the place of alteration, then it cannot be treated as a material alteration. When there is alteration of the date in the cheque which is not authenticated by putting the full signature of the drawer on the place of alteration, the same operates as a material alteration and the same makes the instrument void. Be it so, Ext.P1 is a void cheque, as the alteration in the date was not authenticated by the drawer/accused with his full signature, and the same cannot be the basis of the prosecution.

10. The legal position being so, the learned Magistrate is right in holding that Ext.P1 is a void cheque and



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no prosecution based on the void cheque is permissible. In view of the above, the finding of the learned Magistrate in the above line is only to be justified.

In such view of the matter, the appeal necessary fails. Accordingly, this criminal appeal is dismissed.

**Sd/-
A. BADHARUDEEN
JUDGE**

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