



2026:KER:40471

Cr1.Appeal No.1403/2008

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 9TH DAY OF JUNE 2026 / 19TH JYAISHTA, 1948

CRL.A NO. 1403 OF 2008

AGAINST THE ORDER/JUDGMENT DATED IN Cr1.L.P. NO.584 OF 2008
OF HIGH COURT OF KERALA ORDER/JUDGMENT DATED IN Cr1.L.P. NO.584 OF
2008 OF HIGH COURT OF KERALA ARISING OUT OF THE ORDER/JUDGMENT
DATED 21.03.2007 IN CC NO.1252 OF 2004 OF JUDICIAL MAGISTRATE OF
FIRST CLASS -II (MOBILE), KOTTAYAM

APPELLANT/S:

SHIJOSH.K.
NATTAKAOM P.O., KOTTAYAM

BY ADVS.
SRI.RAJEEV V.KURUP
SRI.AJITH KATHIRANTHARA

RESPONDENT/S:

1 THE STATE OF KERALA
BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA

2 SUJAL KURUVILLA VALPUKARA HOUSE
KOLLAD P.O., KOTTAYAM

BY ADVS.
SRI.S.NIDHEESH
SRI.SABU S.KALLARAMOOLA
SENIOR PUBLIC PROSECUTOR SRI VIPIN NARAYAN.A

THIS CRIMINAL APPEAL HAVING BEING FINALLY HEARD ON
02.06.2026, THE COURT ON 09.06.2026 DELIVERED THE FOLLOWING:

A. BADHARUDEEN, J.

=====
Crl.Appeal No.1403 of 2008
=====

Dated this the 9th day of June, 2026

J U D G M E N T

The complainant in C.C.No.1252/2004 on the files of Judicial First Class Magistrate-II (Mobile) Kottayam, has filed this appeal challenging the judgment in the said case daed 21.3.2007.

2. Heard the learned counsel for the appellant/complainant as well as the learned counsel for the 2nd respondent/accused and the learned Public Prosecutor appearing for the State in detail.

3. On the facts of the case, consequent to dishonour of a cheque dated 09.03.2004 alleged to be issued by the accused to the complainant in discharge of an amount of Rs.4,50,000/- alleged to be borrowed by the accused from the complainant, the complainant lodged prosecution alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act ('NI Act' for short) .

4. After securing the presence of the accused for trial, the



learned Magistrate tried the matter and finally acquitted the accused.

5. While challenging the verdict with support of the twin presumptions under Sections 118 and 139 of the NI Act, it is argued by the learned counsel for the appellant/complainant that in this case PW1, the complainant, deposed supporting the averments in the complaint and proved the transaction and execution of the cheque. Therefore the learned Magistrate went wrong in acquitting the accused. Thus he pressed for reversal of the verdict to record conviction and imposition of proper sentence.

6. Whereas it is submitted by the learned counsel for the 2nd respondent/accused that in this case PW1 the complainant, while giving evidence deposed that the money was given by his father on 5 installments and the details of the same were noted by the father in a note book and the same would be available at his house. He argued further that the complainant has no direct knowledge regarding the transaction which led to execution of the cheque and in such a case the learned Magistrate is right in holding that the complainant failed to prove the case beyond reasonable doubt and the allegation of the complainant is in the midst of



doubt and the same would dis-entitle the benefit of presumptions under Sections 118 and 139 of the N.I Act. Therefore, the verdict is liable to be confirmed.

7. Adverting to the rival contentions, the points arise for consideration are :

(i) Whether the learned Magistrate went wrong in holding that the appellant/complainant failed to prove the case beyond reasonable doubts?

(ii) Whether the verdict impugned is liable to be reversed to record conviction?

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

(iv) The order to be passed?

Point Nos.(i) to (iv)

8. In the instant case the evidence is confined to that of PW1 and Exts.P1 to P6. Ext.P1 is the original cheque dated 09.03.2004 issued for Rs.4,50,000/-. Ext.P2 is the dishonour memo, Ext.P3 is the dishonour intimation memo, Ext.P4 is the copy of lawyer notice, Ext.P5 is the postal receipt and Ext.P6 is the postal acknowledgment.

9. The complainant got examined as PW1 after filing proof



affidavit. During cross examination, his evidence is that Rs.4,50,000/- was given to the accused by his father on 5 installments and whether the accused agreed for a particular period to repay the same was not known to him. His further version is that his father maintained a note book and in the said note book each installments with date thereof were endorsed and the note book would be available in his house. Despite this evidence, the said note book was not tendered in evidence. Further he deposed that he was unaware of the fact that when his father had given the first installment to the accused and stamp paper and a cheque were obtained. Then he added that the stamp paper was available, but when a question was asked as to what was written in the agreement, he answered that he did not read the same.

10. It is the well settled law that in a prosecution alleging commission of offence punishable under Section 138 of the NI Act, the complainant would get the benefit of twin presumptions under Sections 118 and 139 of the NI Act and the pre condition for the same is proof of the transaction and execution of the cheque in a convincing manner. The same would definitely include passing of consideration covered by the cheque. Indubitably such evidence shall be given by the person, who had direct knowledge



regarding the transaction and execution of the cheque and the evidence of a person, who does not know the same is insufficient to prove the transaction and the execution of the cheque. In the instant case, as per the evidence given by PW1, money was given to the accused by 5 installments by the father of the complainant and details of the same were noted by his father in a note book. This evidence would show that, in fact, the transaction and passing of consideration are in between the father and the accused, and the complainant did not know the transaction or execution of the cheque, including passing of consideration. Thus in the instant case the competent person to depose about the transaction and execution of Ext.P1 cheque is none other than the father of PW1. It is relevant to note that, despite this fact, the father of the complainant was not examined. According to the learned counsel for the 2nd respondent/complainant, the father was engaged in money lending business even though he had been working as a police officer and thereby he could not do the business of money lending as against the prohibition contained in the Conduct Rules applicable to Government servants. That is why, he did not opt to give evidence.

11. On scrutiny of the evidence of PW1 and the discussion as aforesaid, it is emphatically clear that the transaction which led to



execution of Ext.P1 cheque failed to be proved by the evidence of PW1 and the complainant had miserably failed to discharge the initial burden cast upon him, to prove the transaction which led to the execution of the cheque, which would disentitle him the benefit of presumptions under Sections 118 and 139 of the NI Act in favour of him. In such view of the matter, the learned Magistrate is right in holding that the complainant failed to prove the case beyond reasonable doubts and therefore the impugned verdict is only to be confirmed.

In the result, the appeal fails and is accordingly dismissed confirming the verdict of the learned Magistrate.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/