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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 16TH DAY OF JUNE 2026 / 26TH JYAISHTA, 1948

CRL.A NO. 2461 OF 2007

AGAINST THE JUDGMENT DATED 30.06.2007 IN CC NO.449 OF 2004 OF THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS -II, CHERTHALA.

APPELLANT/COMPLAINANT:

M.K.JOHNAPPAN,
AGED 1 YEARS
MOOLANKUZHU, EZHUPUNNA POST, CHERTHALA.

BY ADVS.
SRI.P.M.RAFEEK
SRI.P.M.RAFIQ

RESPONDENTS/ACCUSED AND STATE:

- 1 K.V.PADMANABHAN
KUNNATHARA HOUSE, EZHUPUNNA POST, CHERTHALA.
- 2 STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

SRI.VIPIN NARAYANAN, PP

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 16.06.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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'C.R'

JUDGMENT

Dated this the 16th day of June, 2026

The judgment in C.C.No.449/2004 on the files of the Judicial First Class Magistrate Court-II, Cherthala is under challenge in this appeal at the instance of the complainant therein, arraying the accused therein as respondent.

2. According to the complainant, the accused borrowed a sum of Rs.3,00,000/- from the complainant for his business purpose and in discharge of the said liability, he had issued a cheque dated 26.12.2003 drawn on the Corporation Bank, Ezhupunna Branch. When the cheque was presented for collection the same was dishonoured with endorsement 'insufficient funds' and the accused failed to repay the same even on acceptance of legal notice issued by the complainant. The learned Magistrate took cognizance for the offence under Section 138 of the Negotiable Instruments Act (for short 'NI Act') and proceeded with trial.

3. Heard the learned counsel for the appellant and the learned Public Prosecutor, in detail. Perused the verdict under challenge and the records of the Magistrate Court. No representation for the accused/respondent.



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4. During trial, PW1 was examined and Exts.P1 to P7 were marked on the side of the prosecution. On the side of the defence, DW1 to DW3 were examined and Exts.D1(a) to D1(e) and D2 were marked.

5. The learned counsel for the complainant/appellant submitted that even though as deposed by DW1 to 3 and as evident from Ext D1 series and D2, payment of Rs.3,63,130/- was proved by the accused and the same was admitted by the complainant, the payment of Rs.3,63,130/- so proved was towards peeling charges during that period and the case advanced by the appellant /complainant regarding the transaction of the year 2003 is proved by the evidence of the complainant and in such a case the complainant is entitled to get the benefit of presumptions under Sections 118 and 139 of the N.I.Act. Therefore, the learned Magistrate went wrong in acquitting the accused and the verdict is liable to be reversed.

6. No representation for the accused/respondent. The case of the complainant is that during 2003, the accused borrowed Rs.3 lakh from the complainant and issued Ext.P1 cheque. When the cheque was presented for collection , the same was dishonoured as per Ext.P2. Although Ext.P3 lawyer notice was issued and accepted by the accused as per Ext.P4 acknowledgment, he did not repay the amount. Whereas the case advanced by the accused is that he had borrowed an amount of Rs.3 lakh from the complainant (i.e. Rs.2 lakh on 17.7.2000 and Rs.1 lakh from 1.8.2000) and



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he had repaid the same as per Ext.D1 series documents and the liability as a whole has been discharged by repayment of Rs.3,63,130/-. But the complainant misused the cheque given as security at the time of the said transaction and falsely filed this case.

7. In so far as Ext.D1 series receipts proved through DW3 supported by the evidence of DW1 who deposed that he had made the payments by five or eight times and Dw2, he had repaid the amount by ten times, the case of the complainant is that the said amount was paid towards the peeling charges. In fact, the said aspect is not proved at all. Even though the complainant asserted that the transaction was of the year 2003 and the accused admitted the transaction as that of the year 2000, Ext.D1 series would show that an amount of Rs.3,63,130 was repaid along with interest to the accused and therefore the plea of discharge as regards Rs.3 lakh has been proved by the evidence adduced by the accused through DW1 to DW3 and Exts,D1 series and D2. When the accused in a prosecution alleging commission of offence under Section 138 of the NI Act pleads discharge as regards to the consideration shown in the cheque and prove the same, the prosecution must necessarily fail. Once plea of discharge is proved and the complainant alleges the liability proved to be discharged is different from the transaction alleged in the complaint, the complainant shall prove the same. In the absence of such proof, accepting the discharge which is proved,



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the accused is liable to be acquitted. Therefore, the finding of the learned Magistrate that the case advanced by the complainant found to be untenable is only to be justified. If so the same could not be interfered by this Court.

Holding so, this appeal fails and is accordingly dismissed.

Sd/-A. BADHARUDEEN
JUDGE

lsn