IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 8TH DAY OF JULY 2026 / 17TH ASHADHA, 1948

CRL.A NO. 191 OF 2014

AGAINST THE JUDGMENT DATED 29.05.2013 IN Crl.A NO.290 OF 2009 OF ADDITIONAL SESSIONS COURT (ADHOC-1), THALASSERY ARISING FROM THE JUDGMENT DATED 30.06.2009 IN S.T.C.NO.568/2006 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, THALASSERY

APPELLANT/COMPLAINANT:

M/S.SREE GOKULAM CHIT & FINANCE CO. (P) LTD.
SREE GOKULAM TOWERS, NO.66 (OLD NO.365), ARCOT ROAD, CHENNAI, REPRESENTED BY THE POWER OF ATTORNEY HOLDER & LEGAL ASSISTANT ASHALATHA C.K. W/O.DINESH MEERANGATT

BY ADVS.
SRI.K.S.BABU
SMT.N.SUDHA

RESPONDENTS/ACCUSED AND STATE:

1 IDA PURUSHOTHAMAN,
AGED 30 YEARS
W/O.PURUSHOTHAMAN M.K, RESIDING AT ROSHINI, GARDENS ROAD, PILAKOOL, THALASSERY, PIN - 670101

2 THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, COCHIN - 682031

R1 BY ADVS.
SRI.T.RAMESH BABU
SRI.C.K.SREEJITH

R2 BY PUBLIC PROSECUTOR SRI.M.A.SHIHAB

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01.07.2026, THE COURT ON 08.07.2026 DELIVERED THE FOLLOWING:

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JUDGMENT

Dated this the 08th day of July, 2026

The judgment in Crl.A.No.290/2009 on the files of the Additional Sessions Court (Adhoc - 1), Thalassery, arising out of the judgment in S.T.C.No.568/2006 on the files of the Judicial First Class Magistrate Court, Thalassery, is under challenge in this appeal at the instance of the complainant in the said case, arraying the accused as the 1st respondent herein and the State of Kerala as the 2nd respondent.

2. Heard the learned counsel for the appellant/complainant and the learned counsel appearing for the accused/1st respondent. Also heard the learned Public Prosecutor appearing for the State of Kerala.

3. Pursuant to dishonour of cheque dated 16.08.2005 for Rs.65,520/- (Rupees Sixty-five Thousand Five Hundred and Twenty Only) issued by the accused, who stood as surety for a chitty

transaction for the subscriber in chitty No.G3.E.229/18, prosecution was launched by the complainant alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881. (for short, 'the NI Act' hereinafter), by the accused/1st respondent.

4. The learned Magistrate took cognizance of the said offence and tried the case. During trial, PW1 and PW2 were examined and Exts.P1 to P8 were marked on the side of the complainant. On the side of the defence, Exts.D1 and D2 were marked.

5. The learned Magistrate, on appreciation of evidence found that the complainant proved the transaction led to the execution of the cheque so as to avail presumption under Section 139 of the NI Act, where the accused failed to rebut the said presumption. Accordingly, the accused was sentenced to undergo simple imprisonment for a period of 3 months and to pay a compensation of Rs.65,520/- under Section 357(3) of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C. hereinafter). Challenging the said judgment, the accused filed appeal before the learned Sessions Judge, Thalassery. As per the

impugned judgment, the learned Sessions Judge found while discussing Point No.1, that there was absolutely no evidence before the court to establish that the accused had rebutted the presumption under Section 139 of the NI Act. Therefore, it was held that the accused had issued Ext.P2 cheque to the complainant.

6. While discussing Point Nos.2 and 3, the learned Sessions Judge also found that when a notice was refused by the addressee, it would amount to valid service of notice, relying on the decision of this Court in **Viswanadhan** v. **Surendran** reported in **[1998 (1) KLT 694]**. But, while discussing Point No. 4, i.e., whether the complainant had filed the complaint within one month from the date on which the cause of action arose, relying on the decision in **Viswanadhan**'s case (supra), the learned Sessions Judge found that the notice was refused on 17.11.2005, as deposed by PW2, the postman who attempted to serve the notice on the accused, and accordingly held that the complaint was not filed within time, reckoning 17.11.2005 as the date on which the legal notice was refused.

Thus, finding that the complaint filed beyond the period of limitation, the judgment of the trial court was reversed and the accused was acquitted.

7. Since, as regards the transaction leading to the execution of Ext.P2 cheque, both the courts concurrently found in favour of the appellant/complainant and no challenge has been raised before this Court with regard to the said finding by the accused/1st respondent, this Court is inclined to consider the following questions:

(i) Which is the date from which the cause of action for filing a complaint under Section 138 of the NI Act, is to be reckoned, when notice was returned unserved for the reason refused or unclaimed?

(ii) Whether the finding of the appellate court that the complaint was filed beyond the period of limitation is sustainable?

(iii) Whether the verdict would require interference?

(iv) The order to be passed?

8. Point Nos.(i) to (iv)

In the decision in **Viswanadhan**'s case (supra), this Court held

in paragraph No.11 that in cases of refusal to accept the notice by the addressee, knowledge of the notice that can be imputed on the addressee is from the date of refusal and not from the date of despatch of the notice by the sender since the more reasonable, effective, equitable and practical interpretation that could be put to the word 'receipt' is the tender of the letter by the postal peon at the address mentioned in the letter. At the same time, in a later decision of this Court in **Kailasanathan K.G.** v. **Sajish Babu @ Kuttan and Another** reported in **[2012 (2) KHC 529],** this Court considered the same question and held as under:

> *"The contention raised by the accused is that the date of deemed service, should be taken as the date when the postman made the endorsement, that the addressee refused or returned unclaimed. If that view is taken then sometimes, if the postal cover is not returned to the sender within a reasonable time, it would create confusion and unnecessary hardship to the payee. Therefore, there is merit in the submission made by the learned counsel for the complainant that the expression 'the date of receipt of the said notice' in proviso (c) to S.138 of NI Act should*

> *receive a very reasonable, practical and realistic interpretation and not an interpretation which would create confusion or which is likely to defeat the very object of the provision. The presumption of 'deemed service' should be drawn reckoning the date on which the sender of the notice was notified that the notice has not been served and hence the limitation for filing complaint should commence from the date of deemed service; namely, the date when the complainant received the returned postal cover or was so informed by the postal authority in case the postal cover was lost."*

Thus, it appears that the ratio in **Viswanadhan**'s case (supra) is contrary of the decision in **Kailasanathan**'s case (supra).

9. Section 142 of the NI Act deals with cognizance of the offence. As per Section 142, a complaint is liable to be filed within a period of one month. So, there must be a date to count the cause of action for filing the complaint. Since offence under Section 138 of the NI Act is a deemed offence, if the accused is able to repay the amount covered by the cheque within a period of 30 days from the date of cause of action, no offence would be made out. The date of cause of

action is very relevant.

10. As per the amendment made to clause (c) of the proviso to Section 138 of the NI Act, the cause of action for filing a complaint arises only upon the failure of the drawer of the cheque to make payment of the cheque amount to the payee or the holder in due course within 15 days from the date of receipt of the said notice. So, receipt of notice is having relevance to decide the starting point of the cause of action and the limitation. In this connection, another decision of this Court in **K.Cherian Kurian** v. **P.K.Radhakrishnan** reported in **[2018 (2) KHC 689]** : **[2018 (2) KLT 354]** placed by the learned Public Prosecutor also to be referred. In the above judgment, in paragraph No.8, after referring the decision of the Apex Court in **K.Bhaskaran** v. **Sankaran Vaidhyan Balan** reported in **[(1999) 7 SCC 510]** : **[1999 (3) KLT 440 (SC)]** where the Apex Court held that *when a statutory notice under Section 138 proviso (b) of the NI Act is returned by the sendee as "unclaimed", such date of return would be the commencing date for reckoning the*

statutory period of 15 days contemplated in Clause (c) to the proviso (b) of Section 138 of the NI Act. In the said decision, paragraph No.25 of the above judgment was incorporated and the same reads as under:

> *"25. Thus, when a notice is returned by the sendee as unclaimed such date would be the commencing date in reckoning the period of 15 days contemplated in clause (c) to the proviso of Section 138 of the Act. Of course such reckoning would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address. In the present case the accused did not even attempt to discharge the burden to rebut the aforesaid presumption."*

11. Finally, this Court in **K.Cherian Kurian**'s case (supra) also referred the decision in **Kailasanathan**'s case (supra) and in paragraph No.13, this Court found as under:

> *"13. The upshot the light of abovesaid discussion is that in a case like the instant one, where the statutory demand notice under Sec.138 proviso (b) is resumed unversed/unclaimed, then the date on which the notice said*

to have been served on the accused as contemplated in Sec. 138 proviso (c), is the date when the complainant received the returned postal cover or was so informed by the postal authority regarding the service of notice and it is not the date when the postman made the endorsement that the addressee refused or return the post article unclaimed. As held by this Court in the aforesaid judgments, reckoning of the date of deemed receipt as the date of return of notice as in the instant case, where the notice has been returned unserved/unclaimed is unlikely to result in any prejudice to even the accused, as the accused would only get further time from the date of deemed service to discharge the liability due under the cheque. Whereas if hyper technical approach is taken to reckon the said date from the date when the postman made the endorsement that the addressee refused or returned the postal article, then it would cause serious prejudice to the complainant, as in many a case he might get intimation regarding the return of the notice quite late, which might even be after the period of 15 days from the date on which the postman had actually made the endorsement while attempting to serve notice in the address of the accused. This would result in the complaint that may be so filed later, as barred by limitation. In this context, it is

noteworthy to mention that prior to the amendment introduced by Sec.9 of the Central Amendment Act 55 of 2002, made effective from 6.2.2003, there was no power conferred on the criminal court to condone the delay in filing a complaint for offence punishable under Sec. 138 of the Negotiable Instruments Act in view of the mandatory provisions contained clause (b) of Sec. 142 of the N.I. Act, as it stood then, which mandated that complaint is to be filed within one month of the date, on which the cause of action arises under clause (c) of proviso to Sec. 138, etc. It was only later as per the said Amendment Act, 55 of 2002 made effective from 6.2.2003 that the Parliament had engrafted proviso to clause (b) of Sec. 142(1) providing that cognizance of the complaint could be taken by the court after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such stipulated period. So in a situation as in the instant case, which is covered by the provisions that existed prior to the Act 55 of 2002 (made effective prospectively only from 6.2.2003) such a complaint as mentioned herein above would have been totally time barred, with no provision for condoning the delay. This would have led to drastic and undesirable consequence on complainants, who could not be

blamed for the time taken by the Postal Department in returning such unserved registered postal articles."

12. Thus, the ratio laid down by the Apex Court in **K.Bhaskaran**'s case (supra) and by this Court in **Kailasanathan**'s case (supra) and **K. Cherian Kurian**'s case (supra) will hold the field insofar as the computation of the period of limitation is concerned, as the cause of action arises only on the expiry of 15 days from the date of receipt of the demand notice issued under clause (b) of the proviso to Section 138 of the NI Act. Thus, it is held that the presumption of 'deemed service' should be drawn reckoning the date on which the sender of the notice was notified that the notice has not been served and hence the limitation for filing complaint should commence from the date of deemed service; namely, the date when the complainant received the returned postal cover or was so informed by the postal authority in case the postal cover was lost.

13. Coming to the facts of this case, here, the case advanced by

the complainant is that he had issued demand notice on 15.11.2005, calling upon the drawer to discharge the liability within 15 days from the date of receipt of the notice. But, the said notice was refused by the accused and returned back to the complainant with endorsement dated 19.11.2005. Accordingly, reckoning the date of receipt of notice as 19.11.2005, complaint was filed within time, i.e. on 03.01.2006. But, the learned appellate Judge reversed the said finding entered into by the Magistrate Court holding that PW2, the postman attached with Temple Gate Sub Post Office, Thalassery even though given evidence that Ext.P7 notice was refused on 19.11.2005, during cross-examination, he had stated that it was refused on 17.11.2005. Therefore, the complaint was not filed within the period of limitation and holding the complaint as time-barred. In fact, as per Ext.P7 and as deposed by PW2, the complainant received the refused notice on 19.11.2005 and the same to be reckoned as the date of receipt of notice. On perusal of Ext.P7 notice, it was received by the complainant on

19.11.2005. If so, the complaint in the instant case had been filed within time (within 30 days) after the expiry of 15 days from 19.11.2005, and the contra finding entered into by the learned Sessions Judge, is unsustainable.

14. On going through the evidence of PW1, supported by PW2 and Exts.P1 to P8, in the instant case, the complainant proved the transaction which led to the execution of the cheque for Rs.65,520/- (Rupees Sixty-five Thousand Five Hundred and Twenty Only), for which the accused stood as a guarantor for one Purushothaman, the husband of the accused, who was the subscriber. Thereby, the complainant could very well avail of the presumptions under Sections 118 and 139 of the NI Act. Therefore, the contra finding recorded by the learned Sessions Judge is found to be unsustainable and is set aside.

15. In the result, this appeal is allowed. The judgment rendered by the learned Sessions Judge is set aside and the judgment rendered

by the learned Magistrate that the accused/1st respondent committed offence punishable under Section 138 of the NI Act, is restored.

16. Coming to the sentence, the learned counsel for the appellant/complainant submitted that this transaction pertains to the year 2005 and that, by this time, 21 years have already elapsed. Therefore, it is prayed that a fine equivalent to double the cheque amount to be imposed, to compensate the loss suffered by the complainant. This argument has substance, as the compensation awarded in a prosecution for the offence punishable under Section 138 of the NI Act should be sufficient, in accordance with law, to adequately reimburse the loss suffered by the complainant.

Accordingly, the accused/1st respondent is sentenced to undergo simple imprisonment for a day till rising of the court and to pay a fine of Rs.1,31,000/- (Rupees One Lakh Thirty-one Thousand Only). Fine if paid or realised, Rs.1,25,000/- (Rupees One Lakh Twenty-five Thousand Only) shall be paid as compensation to the complainant

under Section 357(1)(b) of the Cr.P.C., and the remaining amount shall go to the State Exchequer. The accused/1st respondent is directed to appear before the Judicial First Class Magistrate Court, Thalassery, within a period of two weeks from today to undergo the sentence. Failing which, the learned Magistrate is directed to execute the sentence imposed hereby, without fail.

Registry is directed to forward a copy of this judgment to the trial court forthwith for information and compliance.

Sd/-
A. BADHARUDEEN
JUDGE

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