IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 16TH DAY OF JULY 2026 / 25TH ASHADHA, 1948

CRL.A NO. 705 OF 2015

AGAINST THE JUDGMENT DATED 30.12.2014 IN CC NO.38 OF 2014 OF JUDICIAL MAGISTRATE OF FIRST CLASS -III, MAVELIKKARA

APPELLANT/COMPLAINANT:

SHINY S.NAIR
W/O.RADHAKRISHNAN NAIR, SREYAS, VAZHUVADY MURI, THAZHAKKARA VILLAGE, MAVELIKARA

BY ADVS.
SRI.ARUN THOMAS
SRI.JENNIS STEPHEN
SHRI.SANTHOSH MATHEW (SR.)

RESPONDENTS/STATE & ACCUSED:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

2 SREEKALA,
W/O.SATHEESH KUMAR, SYRIAN VILLA HOUSE, CHETTIKULANGARA P.O., EREZHA VADAKKUM MURI, KANNAMANGALAM VILLAGE, MAVELIKKARA - 690 101

R1 BY PUBLIC PROSECUTOR SRI.M.A.SHIHAB

R2 BY ADV.SMT.ASHA ELIZABETH MATHEW

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09.07.2026, THE COURT ON 16.07.2026 DELIVERED THE FOLLOWING:

CR

JUDGMENT

Dated this the 16th day of July, 2026

Judgment in C.C.No.38/2014 on the files of the Judicial First Class Magistrate Court - III, Mavelikkara, dated 30.12.2014 is under challenge in this appeal filed under Section 378 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.' hereinafter). The appellant herein is the complainant in the above case. The 2nd respondent is the accused and the 1st respondent is the State of Kerala.

2. Heard the learned counsel for the appellant/complainant, the learned counsel appearing for the 2nd respondent/accused, and the learned Public Prosecutor, in detail. Perused the judgment under challenge along with the records of the trial court.

3. In this case, the complainant alleges commission of the offence punishable under Section 138 of the Negotiable Instruments

Act, 1881 (for short, ‘the NI Act’ hereinafter), by the accused on the premise that Ext.P1 cheque for Rs.4,75,000/- (Rupees Four Lakh Seventy-five Thousand Only), issued by the accused in discharge of the said liability, when presented by the complainant for encashment, the same got dishonoured with the endorsement, “Drawer's signature differs." The further case is that, despite issuance of demand notice, the said amount was not repaid.

4. The trial court proceeded with the trial. During trial, PW1 to PW4 were examined and Exts.P1 to P6 were marked on the side of the complainant, and Exts.X1 and X2 were also marked. No defence evidence was adduced.

5. On appreciation of the evidence, the learned Magistrate found that the complainant had failed to prove the case against the accused beyond reasonable doubt and, accordingly, acquitted the accused. Aggrieved by the said acquittal, the complainant has preferred this appeal.

6. The learned counsel for the appellant/complainant argued that, through the evidence of PW1 to PW4, the complainant had discharged her initial burden of proving the transaction involving a sum of Rs.4,75,000/- (Rupees Four Lakh Seventy-five Thousand Only) and the execution of Ext.P1 cheque towards repayment of the said amount, the learned Magistrate disbelieved the complainant's case mainly on the ground that, when an earlier transaction between the parties had remained unpaid, it was improbable that the complainant would have advanced another substantial amount to the accused. On that reasoning, the learned Magistrate acquitted the accused. According to the learned counsel for the appellant/complainant, the parties are relatives and, therefore, after the complainant had advanced Rs.1,75,000/- (Rupees One Lakh Seventy-five Thousand Only) to the accused on 14.06.2012, the accused again requested a further sum of Rs.3,00,000/- (Rupees Three Lakh Only), which the complainant paid on 12.11.2012.

Thereafter, towards repayment of the total amount of Rs.4,75,000/- (Rupees Four Lakh Seventy-five Thousand Only), the accused issued Ext.P1 cheque. According to the learned counsel for the appellant/complainant, the evidence adduced by the complainant through PW1 to PW4 and Exts.P1 to P6 was sufficient to discharge the complainant's initial burden. It is therefore contended that the learned Magistrate erred in declining to draw the presumptions under Sections 118 and 139 of the NI Act in favour of the complainant to hold that the complainant's case as probable and reliable.

7. Opposing the said contention, the learned counsel for the 2nd respondent/accused submitted that the finding of the learned Magistrate that the complainant's case is improbable, is fully justified, particularly, in view of the fact that Ext.P1 is a typewritten cheque. According to him, the complaint specifically averred that Ext.P1 was filled up and signed in the presence of the complainant.

The learned counsel for the 2nd respondent further submitted that, during cross-examination, PW1 admitted that Ext.P1 was a typewritten cheque brought by the accused and handed over to the complainant. It is therefore, contended that the judgment of acquittal warrants no interference and is liable to be confirmed.

8. Adverting to the rival arguments, the points arise for consideration are;

(i) Whether the trial court was justified in acquitting the accused of the offence punishable under Section 138 of the NI Act?

(ii) Whether the verdict would require interference?

(iii) The order to be passed?

<u>Point Nos.(i) to (iii)</u>

9. In order to prove the transaction and the execution of Ext.P1 cheque, the complainant herself got examined as PW1 and she

deposed in tune with the averments in the complaint. According to her, the accused and the complainant are relatives and that the accused borrowed Rs.1,75,000/- (Rupees One Lakh Seventy-five Thousand Only) from the complainant on 14.06.2012. Thereafter, on 12.11.2012, the accused borrowed a further sum of Rs.3,00,000/- (Rupees Three Lakh Only) at the complainant's residence. On the same day, the accused executed Ext.P1 cheque, dated 13.12.2012, drawn on the Indian Overseas Bank, Mavelikkara Branch, in favour of the complainant towards repayment of the total amount of Rs.4,75,000/- (Rupees Four Lakh Seventy-five Thousand Only). On presentation, the cheque was dishonoured with the endorsement, "Drawer's signature differs." Thereafter, a statutory demand notice was issued. PW1 testified further that the accused issued the cheque after putting a signature different from her original signature with a view to cheat and defraud the complainant. She further deposed that legal notice of demand was issued on 10.01.2013 and was accepted by the accused on 12.01.2013. However, the accused failed to make payment within the statutory period. PW1 was cross-examined with a view to discredit her version. However, she reiterated the transaction. According to her, for advancing Rs.1,75,000/- (Rupees One Lakh Seventy-five Thousand Only) to the accused on 14.06.2012, she had pledged 13.5 sovereigns of gold ornaments in the Co-operative Bank, Chennithala, and the amount so obtained was given to the accused. But, no cheque was issued at the time of the initial transaction and the money was given to the accused without any interest for a period of two months. According to PW1, the accused did not repay the amount within the agreed period of two months and sought an extension of one more month for repayment. Thereafter, on 12.11.2012, she advanced a further sum of Rs.3,00,000/- (Rupees Three Lakh Only) to the accused in cash. Thus, the interval between the two transactions was about five months.

10. It is argued by the learned counsel for the accused that, during cross-examination, PW1 admitted that both the accused and the complainant were capable of filling up the cheque. However, Ext.P1 is a typewritten cheque. Therefore, issuance of a typewritten cheque in this context would make the case of the complainant as not believable. It is further submitted that PW1 also admitted that her husband was employed as a driver in the Police Department.

11. The Manager of the State Bank of Travancore, Mavelikkara Branch was examined as PW2. Through PW2, Ext.X1, the statement of account pertaining to the complainant's account, was tendered in evidence. Ext.X1 would show transactions involving substantial amounts in the complainant's account to justify her capacity to advance the cheque amount.

12. PW3, the Assistant Manager of the Indian Overseas Bank, Mavelikkara Branch also was examined. Through PW3, Ext.X2, the statement of account of Sreekala Satheesh, (the accused) during the

period from 04.10.2012 to 29.12.2012, was tendered in evidence. Ext.X2 would show that the balance in the said account as on 15.12.2012 was Rs.554.55/- (Rupees Five Hundred Fifty-four and Paise Fifty-five Only). Thus, on the date of dishonour of Ext.P1 cheque, there was no sufficient fund in the account of the accused.

13. PW4 filed an affidavit in lieu of chief examination stating that he was familiar with the complainant. He deposed that the accused had borrowed money from the complainant on 12.11.2012 and had executed a cheque. In cross-examination, he stated that he was a building contractor. He further deposed that the complainant was the owner of three tipper lorries and that he had acquainted with the complainant for the preceding five years. Building construction materials were transported in the lorries owned by the complainant. He also stated that the complainant's husband was a policeman and that he was residing about 6 to 7 kms. away from the complainant's residence. He further deposed that he had gone to the complainant's

house about 60 times and that he was doing business with the complainant on a credit basis. According to him, the complainant had paid a sum of Rs.3,00,000/- (Rupees Three Lakh Only) to the accused, and all the currency notes were of the denomination of Rs.1,000/-.

14. In the instant case, the learned Magistrate disbelieved the version of PW4, as he did not state the exact amount borrowed by the accused in his chief affidavit, though he had given evidence during cross-examination that the appellant borrowed Rs.3,00,000/- (Rupees Three Lakh Only) from the complainant and issued cheque for Rs.4,75,000/- (Rupees Four Lakh Seventy-five Thousand Only). The learned Magistrate was of the view that PW4 was a witness brought in, at the last stage of the proceedings and was introduced as a surprise witness to the accused. Accordingly, the learned Magistrate found his evidence to be doubtful.

15. Here, the crucial question is whether the evidence of PW1,

along with the other evidence on record, establishes that the accused had borrowed Rs.1,75,000/- (Rupees One Lakh Seventy-five Thousand Only) on 14.06.2012 and a further sum of Rs.3,00,000/- (Rupees Three Lakh Only) on 12.11.2012, as alleged in the complaint, and had issued Ext.P1 cheque towards discharge of the total liability of Rs.4,75,000/- (Rupees Four Lakh Seventy-five Thousand Only).

16. It is true that the second transaction whereby the complainant gave Rs.3,00,000/- (Rupees Three Lakh Only) to the accused on 12.11.2012 was while in subsistence of an earlier transaction of Rs.1,75,000/- (Rupees One Lakh Seventy-five Thousand Only). But the case of the complainant is that Ext.P1 cheque was issued for a total sum of Rs.4,75,000/- (Rupees Four Lakh Seventy-five Thousand Only) (Rs.1,75,000 + Rs.3,00,000).

17. Here, Ext.P2 dishonour memo would show that the cheque was dishonoured with the endorsement, "Drawer's signature differs." It is now well settled that the dishonour of a cheque on the

ground of "Drawer's signature differs" also attracts an offence of Section 138 of the NI Act, when there was no sufficient fund in the account of the drawer to honour the same, provided the other statutory requirements are satisfied. The evidence of PW3 supported by Ext.X2 would show that there was no sufficient money in the account of the accused when Ext.P1 cheque was presented for collection.

18. As regards Ext.P1, the suggestion put to PW1 during her cross-examination was that, in the year 2010, the accused had borrowed Rs.2,00,000/- (Rupees Two Lakh Only) from the complainant and had repaid interest twice the amount borrowed. PW1 denied the said suggestion. Another suggestion made during her cross-examination was that, out of the total amount of Rs.2,00,000/- (Rupees Two Lakh Only) borrowed in the year 2010, only Rs.1,00,000/- (Rupees One Lakh Only) remained outstanding. PW1 also denied the said suggestion.

19. As regards the issuance of Ext.P1 cheque, no suggestion denying its execution was put to PW1 during her cross-examination. On the other hand, in the statement given by the accused under Section 313 of the Cr.P.C., the accused admitted that he had borrowed Rs.2,00,000/- (Rupees Two Lakh Only) from the complainant in the year 2010 and contended that interest for the amount had been paid pursuant to a compromise arrived at before the police station. The crucial question is whether the evidence discussed above is sufficient to discharge the initial burden cast upon the complainant in the instant case or whether the complainant has failed to discharge the same, thereby rendering the verdict of acquittal to be confirmed.

20. Advancing a loan to a relative, even during subsistence of an earlier liability by itself is not a sufficient reason to disbelieve the complainant's case that she had advanced a further sum of Rs.3,00,000/- (Rupees Three Lakh Only) to the accused when the

earlier loan of Rs.1,75,000/- (Rupees One Lakh Seventy-five Thousand Only) remained outstanding, when the parties are admittedly relatives. Moreover, the gap between the two transactions was only about five months i.e., 14.06.2012 and 12.11.2012. Although it is contended by the learned counsel for the accused that issuance of a typewritten cheque when both parties were capable of writing the cheque would create a doubt as regards to the transaction and execution of the cheque, issuance of a typewritten cheque though not common, is not prohibited by law. Thus, in the case of a cheque issued as typewritten, when the complainant succeeds in establishing the transaction and execution of the cheque, merely because the cheque was a typewritten one, shall not be a reason to disbelieve the case of the complainant.

21. Evaluating the evidence available with a view to find out whether the complainant discharged her initial burden to prove the transaction and issuance of Ext.P1 cheque towards a liability of

Rs.4,75,000/- (Rupees Four Lakh Seventy-five Thousand Only) merely for the reason that the complainant, who is closely related to the accused given Rs.3,00,000/- (Rupees Three Lakh Only) on 12.11.2012 while a liability to the tune of Rs.1,75,000/- (Rupees One Lakh Seventy-five Thousand Only) alleged to be borrowed on 14.06.2012 was subsisting, would not make the evidence of PW1 to prove the case put forward by her as improbable.

22. Here comes the significance of the case advanced by the accused. During cross-examination of PW1, the defence admitted that the accused had borrowed Rs.2,00,000/- (Rupees Two Lakh Only) in the year 2010 and that a sum of Rs.1,00,000/- (Rupees One Lakh Only) remained outstanding in relation to the said liability. However, during 313 examination, the accused put up a case that she had issued a blank cheque for the transaction of the year 2010 and the same was misused for the purpose of this case. In the 313 examination, she also stated that when police complaint was lodged,

she continued to pay the interest after discharging Rs.1,00,000/- (Rupees One Lakh Only).

23. Having appraised the evidence on the issue, there is no reason to disbelieve the case put forward by the complainant. Therefore, the learned Magistrate went wrong in holding that the complainant had failed to prove her case beyond reasonable doubt. Therefore, it is held that the complainant succeeded in proving the transaction led to execution of Ext.P1 cheque, so that she could very well avail the twin presumptions under Sections 118 and 139 of the NI Act, particularly, where the accused admitted liability to the tune of Rs.1,00,000/- (Rupees One Lakh Only) arising out of Rs.2,00,000/- (Rupees Two Lakh Only) he had borrowed in the year 2010.

In the result, this appeal is allowed. The verdict under challenge is interfered and set aside. Consequently, the 2nd respondent/accused is found guilty for the offence punishable under Section 138 of the NI

Act and is convicted for the said offence. Accordingly, the 2nd respondent/accused is sentenced to undergo simple imprisonment for a day till rising of the court and to pay a fine of Rs.4,75,000/- (Rupees Four Lakh Seventy-five Thousand Only). The fine amount, if paid or realised shall be given as compensation to PW1 under Section 357(1)(b) of the Cr.P.C. In default of payment of fine, the 2nd respondent/accused shall undergo default imprisonment for a period of six months. The 2nd respondent/accused is directed to appear before the Judicial First Class Magistrate Court - III, Mavelikkara 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.

The amount, if any, paid during the pendency of this appeal shall be reduced while reckoning payment or realisation of fine.

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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