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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. 1077 OF 2018

AGAINST JUDGMENT DATED 31.07.2018 IN ST NO.10 OF 2017 OF
CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA

APPELLANT/COMPLAINANT:

GEORGE P.O. @GEORGEKUTTY
AGED 62 YEARS
SKARIAH OOMMEN, MADAKKUVELI PARAKKAL HOUSE,
PRAKKANAM P.O. CHENNEERKKARA VILLAGE, PATHANAMTHITTA
DISTRICT

BY ADV SRI.V.PHILIP MATHEWS

RESPONDENTS/ACCUSED AND STATE:

- 1 M.NISSAMUDHEEN
AGED 57 YEARS
S/O MUSTHAFA RAWTHER, NISHADH MANZIL, SEETHATHODU,
KONNI TALUK, PATHANAMTHITTA DISTRICT-689667
- 2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA.

BY ADVS.
SRI.MANU RAMACHANDRAN
SRI.T.S.SARATH
SRI.M.KIRANLAL
SRI.R.RAJESH (VARKALA)

PP M A SHIHAB



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THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
08.07.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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'C.R'**JUDGMENT**

Dated this the 08th day of July, 2026

The judgment in S.T No.10/2017 on the files of the Chief Judicial Magistrate Court, Pathanamthitta dated 12.07.2018 is under challenge in this appeal at the instance of the complainant therein, arraying the accused therein as the 1st respondent and the State of Kerala as the 2nd respondent.

2. Heard the learned counsel for the appellant and the learned counsel for the 1st respondent. Also heard the learned Public Prosecutor, in detail. Perused the verdict under challenge and the records of the Magistrate Court.

3. According to the complainant, the accused borrowed a sum of Rs.1,55,000/- from the complainant and in discharge of the said liability, he had issued cheque for the said sum dated 20.10.2016 drawn on the Canara Bank, Seethathodu 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 demand 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.



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4. During trial, PW1 was examined and Exts.P1 to P7 were marked on the side of the prosecution.

5. On an appreciation of evidence, the learned Magistrate acquitted the accused/1st respondent.

6. The learned counsel for the appellant/complainant submitted that the acquittal was recorded solely on the finding that there was no legal notice in the instant case and in that endeavour, the learned Magistrate compared the signatures of the accused in Ext.P1 cheque and in Ext.P5 acknowledgment card and arrived at a conclusion that there was no match between the two signatures. Hence, he was acquitted. According to the learned Counsel for the complainant/appellant regarding the transaction led to execution of Ext.P1 cheque, the learned Magistrate found the same in favour of the complainant. Thus, the verdict would require interference.

7. Whereas, it is submitted by the learned counsel for the 1st respondent/accused, going through the evidence of PW1, when he was asked as regards the source of money advanced Rs.1,55,000/-, he had answered that he had no documents for the same. Therefore, the financial capacity of PW1 to advance the said amount failed to be proved even though the same was specifically challenged. That apart the finding as regards the non-issuance of legal notice also to be justified. Therefore, the judgment impugned



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would not require any interference.

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

(i) Whether the learned Magistrate went wrong in finding that the accused/appellant did not commit offence punishable under Section 138 of the N.I Act ?

(ii) Whether the trial court verdict requires interference?

(iii) Order to be passed.

9. First of all, it is held that once the complainant produces postal receipt showing issuance of notice in writing in the correct address of the accused, issuance of notice to be presumed under Section 27 of the General Clauses Act as held by the Apex Court in **Alavi Haji v. Palapetty Muhammed [(2007) 6 SCC 555] [1999(3) KLT 441 : 2007 (2) KHC 932]**. Thus, serving notice is not the requirement of law. Therefore, the finding entered into by the learned Magistrate to hold that there was no legal notice merely comparing the signatures of the accused in Ext.P1 with that of Ext.P5, would not suffice the requirement to find that there was no legal notice of demand. Therefore, the said findings is liable to be interfered and reversed. If such a procedure is recognized in law, clever accused may put a different signature in the acknowledgment card to contend that he did not accept the notice.



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Once the acknowledgment card showing service of notice would be received by the complainant, its relevance is only for counting the period of limitation. Be it so, if after production and tendering of the acknowledgment card by the complainant in evidence, if the accused disputes that he did not receive the notice, it is for the accused to prove the same, by examining the postman concerned.

10. In this case, PW1 by filing chief affidavit deposed that the accused borrowed Rs.1,55,000/- from him and in repayment of the said sum, Ext.P1 cheque was issued. It was through him Ext.P2 dishonour memo, Ext.P3 lawyer notice, Ext.P4 postal receipt and Ext.P5 acknowledgment card were tendered in evidence. Even though during cross examination, PW1 deposed, while answering a question put up by the learned defense counsel that there was no document to show that she had Rs.1,55,000/- with her to advance as loan as on 03.10.2016, during re-examination, PW1 testified that Rs.65,000/- out of Rs.1,55,000/- was the amount obtained from the sale of timber and remaining amount by the sale of rubber sheets and other items and the profit from agricultural crops, for which no documents were available. This evidence was not challenged. Thus PW1 fully justified the source of money advanced to the accused. Here the defence case suggested during cross examination of PW1 was by denying the transaction and execution of Ext.P1 cheque,



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while admitting that there was financial dealing between the complainant and the accused during 2013 and the cheque entrusted for the said transaction towards security was used after putting name, amount, date etc. But the accused has no case that he had discharged the said liability or has no reasonable explanation as to why the cheque remained in the possession of the complainant till 2016. Thus issuance of Ext.P1 cheque for a liability of 2013 was admitted while denying the transaction as alleged by the complainant. In the instant case, the finding as regards the absence of legal notice was found in favour of the complainant by this Court already. Where the evidence of PW1 would show that the complainant discharged his initial burden in the matter of transaction led to execution of Ext.P1 cheque he could very well avail the twin presumptions under Section 118 and 139 of the NI Act in his favour. If so, the verdict rendered by the learned Magistrate would not sustain and the same is liable to be reversed and set aside.

In the result, the appeal is allowed and the verdict impugned is set aside. The 1st respondent/accused is convicted for the offence punishable under Section 138 of the NI Act and sentenced as under:



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i) He sentenced to undergo simple imprisonment till rising of the court and to pay a fine of Rs.2,00,000/- and in default of payment of fine to undergo simple imprisonment for a period of four months. It is specifically made clear that as admitted by both sides, during pendency of this appeal Rs.50,000/- was paid by the accused to the complainant and the same shall be set off from the total fine amount.

ii) Fine amount, if paid or realised shall be given as compensation to PW1 under S.357(1)(b) of Code of Criminal Procedure. The 1st respondent/accused is directed to appear before the trial court at 11.00 a.m., on 31.07.2026 to undergo the sentence hereby imposed. On failure to do so, the trial court is directed to execute the sentence imposed by this Court without fail.

Registry is directed to forward a copy of this judgment to the Cheif Judicial Magistrate Court, forthwith, for information and further steps.

Sd/-A. BADHARUDEEN
JUDGE

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