



2026:KER:59681

CRL.MC NO. 4003 OF 2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 5TH DAY OF AUGUST 2026 / 14TH SRAVANA, 1948

CRL.MC NO. 4003 OF 2026

AGAINST THE ORDER/JUDGMENT DATED IN ST NO.807 OF 2022
OF JUDICIAL MAGISTRATE OF FIRST CLASS -I, KANNUR

PETITIONER/ACCUSED:

T. UNNIKRISHNAN,
AGED 52 YEARS
S/O.SUBRAMANIAN,PWD CONTRACTOR, THANIKKOTTIL HOUSE,
VENGASSERI P.O., OTTAPPALAM, PALAKKAD, PIN - 679516

BY ADVS.
SHRI.P.SATHISAN
SHRI.SHIBU B.S
SHRI.RAZAK M.
SHRI.BIJU P.PAUL
SHRI.ALVIN JEWEL S.S.
SMT.VIDHYA T.U.
SMT.ABHIRAMI.S
SMT.LEENA VARGHESE
SHRI.DANIEL A.J.
SHRI.SREEKARTHIK S. MENON

RESPONDENTS/COMPLAINANT:

1 RATHEESH K,
 AGED 47 YEARS
 S/O.NARAYANAN,SECRETARY OF THE EDUCATIONAL
 EMPOWERMENT & WELFARE CO-OPERATIVE SOCIETY, KANNUR
 LTD. (C-1570), VICHITHRA COMPLEX, KANNUR, PIN -



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

BY ADV SHRI.SURESH KUMAR KODOTH

PUBLIC PROSECUTOR SRI. DEVADAS H MALLAN

THIS CRIMINAL MISC. CASE HAVING COME UP FOR FINAL
HEARING ON 29.07.2026, THE COURT ON 05.08.2026 PASSED THE
FOLLOWING:



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“C.R.”

C.S.DIAS,J.

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Crl.M.C No.4003 of 2026

Dated this the 5th day of August, 2026**ORDER**

The point to ponder in this petition is whether the complaint can be quashed on the ground that, in its cause title, the name of the authorised agent precedes that of the complainant society.

2. The petitioner is the accused in S.T. No.807/2022 on the file of the Court of the Judicial First-Class Magistrate-I, Kannur (for short, '*Trial Court*'), which has been registered on the basis of a complaint filed by the first respondent, the Secretary of the Educational Empowerment & Welfare Co-operative Society, Kannur ('Society' for brevity), alleging that a cheque issued by the petitioner in its favour for



Rs.3,16,43,185/-, in discharge of a legally enforceable liability, got dishonoured due to insufficiency of funds in the petitioner's bank account. Despite receipt of the statutory demand notice, the petitioner has failed to pay the cheque amount.

3. The petitioner has invoked the inherent jurisdiction of this Court to quash the complaint principally on the ground that the complaint has not been filed by the payee of the cheque, namely, the Society, but by its secretary. According to the petitioner, the complaint merely describes the first respondent as an employee of the Society and not as one representing the payee (Society). Placing reliance on the decision of this Court in **Jose P.P. v. M.M. Abdulkhader and Another** [2020 (3) KHC 545], it is argued that an authorised representative or power of attorney holder cannot maintain a complaint in his personal capacity merely by referring to his designation. As the above legal position



was overlooked by the Trial Court, while taking cognizance of the offence, the complaint is liable to be quashed.

4. The first respondent has filed a counter affidavit controverting the above allegations. It is asserted that the Educational Empowerment & Welfare Co-operative Society is a Society registered under the Kerala Co-operative Societies Act, 1969, and that its bye-laws expressly empower the Secretary to institute legal proceedings on behalf of the Society. It is further stated that the Managing Committee of the Society, by resolution dated 29.09.2021, has specifically authorised the Secretary to file the complaint. The cheque was issued in favour of the Society in discharge of a legally enforceable debt, and the Society, being the payee, has instituted the complaint through its Secretary, in whose favour the executive powers of the Society are vested



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under the bye-laws. It is also contended that the legal status of a Co-operative Society is distinct from that of a public limited company and that the challenge, raised nearly four years after the institution of the complaint, is purely technical and with the oblique intention to protract the final determination of the complaint. The order taking cognizance is correct. The petition warrants to be dismissed.

5. I have heard Sri. Sathisan P., the learned counsel for the petitioner, Sri. Suresh Kumar Kodoth, the learned counsel for the first respondent, and Sri. Devadas H. Mallan, the learned Public Prosecutor.

6. The learned counsel for the petitioner reiterated the contentions averred in the petition. Placing reliance on the decisions of this Court in **Jose P.P. v. M.M. Abdulkhader's case** (supra) and **Jayakumar v. Devi Vilasom Kettuthengu Sangham and Another** [2015 (5) KHC 649], and the decision of the Hon'ble Supreme



Court in **National Small Industries Corporation Ltd. v. State (NCT of Delhi) and Others** [2008 KHC 6997], it was contended that an employee or office bearer of a Co-operative Society cannot maintain a complaint under Section 138 of the N. I Act in his individual name. It was, therefore, argued that the complaint is liable to be quashed.

7. On the other hand, the learned counsel for the first respondent, supported by the learned Public Prosecutor, opposed the petition. It was submitted that a reading of the complaint leaves no room for doubt that the proceedings have been instituted by the Society, represented by its secretary. The Secretary is duly authorised under the Society's bye-laws and by a resolution of the Managing Committee to represent the Society and institute legal proceedings. The cheque in question was admittedly drawn in favour of the Society. It was therefore contended that the challenge in the



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petition is devoid of merit.

8. The complainant is described in the cause title of the complaint as follows:

“Ratheesh K.S/o Narayanan, 43 years, The Secretary, The Educational Empowerment & Welfare Cooperative Society, Kannur Limited (C 1570), Vichithra Complex, Kannur – 2.”

9. It is also apposite to extract the following averments in the complaint:

“3) The complainant and the accused are known to each other and they had entered into an agreement on 23/10/2020 from the office of the complainant at Kannur. As per the terms of the agreement the complainant agreed to supply human resources and also required money for executing the public works entrusted to the accused by the State and Central Governments.”

“6). Thus, as per the books of records maintained by the complainant in the name of the accused during the banking business the accused owed the liability as on 25/02/2022 to the tune of Rs.3,16,43,185/- (Rupees Three crore sixteen lakh forty-three thousand one hundred and eighty-five only) to the complainant with future interest and cost. Thus, the accused issued cheque bearing No.135703 dated 25/02/2022 of South Indian Bank Limited, G.B. Road, Palakkad, for an amount of Rs.3,16,43,185/- (Rupees Three crore sixteen lakh forty-three thousand one hundred and eighty-five only) to the complainant and the same was executed and delivered by the accused to the complainant collecting the earlier cheques back.”

10. A plain reading of the above averments distinctly



shows that the transaction was between the petitioner and the Society. It is also undisputed that the cheque was drawn in favour of the Society. Along with the complaint, the first respondent had produced, besides the dishonoured cheque and other documents, copies of the agreement executed between the parties, the registration certificate of the Society, the bye-laws and the amended bye-laws of the Society and the resolution passed by the Managing Committee authorising the Secretary to institute the proceedings.

11. The principal plank of the petitioner's argument is founded on the decision of this Court in **Jose P.P. v. M.M. Abdulkhader and Another** (supra), wherein it was held that a power of attorney holder or an authorised representative can only represent the principal and cannot maintain a complaint in his own name as though he were the complainant. Such a representative can initiate criminal proceedings only on behalf of the



principal.

12. In this context, it is relevant to refer to the decision of the Hon'ble Supreme Court in **Bhupesh Rathod v. Dayashankar Prasad Chaurasia and Another** [(2022) 2 SCC 355], which dealt with a substantially similar issue, in the following manner:

“21. If we look at the format of the complaint which we have extracted aforesaid, it is quite apparent that the Managing Director has filed the complaint on behalf of the Company. **There could be a format where the Company's name is described first, suing through the Managing Director but there cannot be a fundamental defect merely because the name of the Managing Director is stated first followed by the post held in the Company.**

22. It is also relevant to note that a copy of the Board Resolution was filed along with the complaint. An affidavit had been brought on record in the trial court by the Company, affirming to the factum of authorisation in favour of the Managing Director. A Manager or a Managing Director ordinarily by the very nomenclature can be taken to be the person in charge of the affairs of the Company for its day-to-day management and within that activity would certainly fall the act of approaching the court either under civil law or criminal law for setting the trial in motion. It would be too technical a view to defeat the complaint merely because the body of the complaint does not elaborate upon the authorisation. The artificial person being the Company had to act through a person or official, which logically would include the Chairman or Managing Director. Only the existence of authorisation could be verified.

25. The description of the complainant with its full registered office address is given at the inception itself except that the Managing



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Director's name appears first as acting on behalf of the Company. The affidavit and the cross-examination in respect of the same during trial support the finding that the complaint had been filed by the Managing Director on behalf of the Company. **Thus, the format itself cannot be said to be defective though it may not be perfect. The body of the complaint need not contain anything more in view of what has been stated at the inception coupled with the copy of the Board Resolution.** There is no reason to annex a copy of the Board Resolution unless the complaint had been instituted on behalf of the Company.

26. In our view, one of the most material aspects is that the signatures on the cheques were not denied. Nor was any alternative explanation offered as to why the duly signed cheques were handed over to the Company. There was no plea of fraud or misrepresentation. Faced with this position, the respondent merely sought to rely upon a technical objection regarding the format of the complaint to evade liability."

(emphasis supplied)

13. On a careful comparison of the pleadings in the present complaint with the facts considered in **Bhupesh Rathod's case**, I am of the firm view that the ratio laid down in the said decision squarely governs the present case.

14. A holistic reading of the complaint explicitly reveals that Ratheesh K. has instituted the proceedings



in his capacity as the Secretary of the Society and not in his individual capacity. The cheque in question was admittedly issued in favour of the Society; the statutory notice was also issued by the Society; and the agreement produced with the complaint was executed between the petitioner and the Society.

15. The ground of attack by the petitioner is with respect to the manner in which the cause title has been drafted, namely, that the Secretary's name precedes the name of the Society instead of describing the Society as represented by its Secretary.

16. As held by the Hon'ble Supreme Court in **Bhupesh Rathod's** case (supra), such a defect, if at all, is merely technical and cannot defeat an otherwise maintainable prosecution.

17. In this context, it is also profitable to refer to the relevant observations in **National Small Industries Corporation Ltd's** case, which reads thus"



“11.....As a result, the company becomes a de jure complainant and its employee or other representative, representing it in the criminal proceedings, becomes the de facto complainant. Thus, in every complaint where the complainant is an incorporeal body, there is a complainant de jure and a complainant de facto. Clause (a) of the proviso to Section 200 provides that where the complainant is a public servant, it will not be necessary to examine the complainant and his witnesses. Where the complainant is an incorporeal body represented by one of its employees, the employee who is a public servant is the de facto complainant and, in signing and presenting the complaint, acts in the discharge of his official duties.”

18. In **Rathish Babu Unnikrishnan v. State (NCT of Delhi) and Another** [(2022) 20 SCC 661], the Hon’ble Supreme Court has held that when there is a legal presumption under Section 139 of the N.I Act, it would not be judicious to carry out a detailed enquiry on a disputed question of fact at the pre-trial stage to quash the complaint.

19. In the above conspectus, particularly in view of the bye-laws of the Society and the resolution of the Managing Committee authorising Ratheesh K., the Secretary, to institute the proceedings, I have no hesitation in holding that the complaint has been filed by



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the Society, the payee of the cheque, represented by its duly authorised Secretary. The contention that the complaint has been instituted by Ratheesh K. in his individual capacity is devoid of substance.

20. The challenge raised by the petitioner is founded solely on the form in which the cause title has been drafted and not on the competence or authority of the person who instituted the complaint. Such a hyper-technical objection cannot be permitted to defeat a legitimate prosecution.

The Criminal Miscellaneous Case is bereft of any merit, and is consequently dismissed. Considering the fact that the complaint is of the year 2022, the Trial Court is directed to dispose of the complaint, in accordance with law and as expeditiously as possible.

SD/-
C.S.DIAS, JUDGE

rmm/01/08/2026



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APPENDIX OF CRL.MC NO. 4003 OF 2026

PETITIONER ANNEXURES

- Annexure A1 CERTIFIED COPY OF S.T.NO.807 OF 2022 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, KANNUR
- Annexure A2 TRUE COPY OF THE RELEVANT EXTRACT OF THE DISHONOR MEMO OF SOUTH INDIAN BANK LTD., DATED 05.04.2022
- Annexure A3 TRUE COPY SUMMONS ISSUED BY THE LEARNED MAGISTRATE AFTER TAKING COGNISANCE OF THE COMPLAINT WHICH HAD BEEN FILED BY 1ST RESPONDENT.

RESPONDENT ANNEXURES

- Annexure R1 (a) TRUE COPY OF THE BY LAWS OF THE SOCIETY APPROVED BY THE JOINT REGISTRAR ON 19/1/2002
- Annexure R1 (b) TRUE COPY OF THE AMENDED BY LAWS OF THE SOCIETY APPROVED BY THE JOINT REGISTRAR ON 29/11/2003
- Annexure R1 (c) TRUE COPY OF THE AMENDED BY LAWS OF THE SOCIETY APPROVED BY THE JOINT REGISTRAR ON 7/6/2023
- Annexure R1 (d) TRUE COPY OF THE RESOLUTION DATED 29/9/2021 TAKEN BY THE MANAGING COMMITTEE