



2026:KER:78185

Cr1.A.No.2002 of 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 8TH DAY OF OCTOBER 2026 / 16TH ASWINA, 1948

CRL.A NO. 2002 OF 2024

AGAINST THE JUDGMENT DATED 24.09.2024 IN ST NO.2754
OF 2015 OF JUDICIAL MAGISTRATE OF FIRST CLASS, VARKALA

APPELLANT/COMPLAINANT:

G SANIL KUMAR
AGED 52 YEARS
S/O GOPINATHAN, MANGALATH HOUSE,
MANAMBOOR PO, CHIRAYINKEEZHU TALUK,
THIRUVANATHUPURAM, PIN - 695001

BY ADVS.
SRI.P.RAHUL
SMT.ABHINA L.

RESPONDENTS/ACCUSED AND STATE:

- 1 SUJITH
S/O SUGATHAN, SNEHATHEERAM HOUSE, MOONGODU P.O.,
KOOTTIKADA, OTTUR VILLAGE- NOW RESIDING AT
SNEHATHEERAM HOUSE, KUTTUMAVE, KAVALAYUR PO,
VARKALA TALUK, THIRUVANANTHAPURAM, PIN - 695144
- 2 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

SR PP SAJEEV P K,
ADV.PRASANTH M .P (STATE BRIEF)

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
08.10.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



CR

JUDGMENT

Dated this the 8th day of October, 2026

The complainant in ST No.2754/2015 on the files of the Judicial First Class Magistrate Court, Varkkala, has filed this appeal, challenging judgment rendered by the learned Judicial First Class Magistrate in the above case, whereby the first respondent/the accused therein was acquitted.

2 Heard the learned counsel for the complainant/appellant and Adv.Sri.Prasanth M.P., appointed as the State Brief to argue the case of the first respondent/accused, after relinquishment of the engagement of Adv.Sri.N.Sunil Joseph, who had earlier filed vakalat for the first respondent/accused.

3. I shall refer the parties in this appeal as 'complainant' and 'accused' for easy reference.



4. Here, the prosecution case is that the accused committed offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act' for short). The summary of the allegation is that the accused borrowed a sum of ₹9,30,230/- from the complainant through various transactions on different dates, through the account of the accused. Thereafter, towards repayment of the said amount, Ext.P1 cheque for ₹9,30,230/- was issued on 06.07.2015. When the same was presented for collection, the same was returned with endorsement "funds insufficient". Thereupon, legal notice was issued demanding payment of the said amount, but the accused did not pay the amount.

5. The learned Magistrate proceeded with trial. During trial, PW1 and PW2 were examined and Exts.P1 to P12 were marked on the side of the prosecution. On the side of defence, DW1 and DW2 were examined and Exts.D1 to D5 were marked.



6. Thereafter, the learned Magistrate raised seven points for consideration and all the points, except point No.2 regarding the transaction, execution of the cheque and failure to repay the amount on issuance of demand notice, which would constitute commission of a deemed offence under Section 138 of the NI Act, were found in favour of the complainant by the learned Magistrate. However, while answering point No.2, the learned Magistrate found that the oral evidence of DW2 supported by Ext.D5, statement of accounts of the accused, would show that the money was transferred by the complainant to the accused in installments on various occasions during the period from 2011 to 2012. Accordingly, it was found that the consideration for Ext.P1 cheque is a time-barred debt and accordingly, the accused was acquitted on the sole reason.

7. According to the learned counsel for the complainant, the learned Magistrate went wrong in finding so,



even though the finding of the learned Magistrate that the transactions were in the year 2011 and 2012 is true based on the evidence available. It is settled law that issuance of cheque for a time-barred cheque is not prohibited and on dishonour of the said cheque also, when failure to repay the cheque amount within the statutory period, on issuance of demand notice mandated under Section 138(1) of the NI Act, offence under Section 138 of the NI Act would attract. In this connection, it is apropos to refer a Division Bench decision of this Court in **Ramakrishnan v. Parthasaradhy**, reported in **2003 KHC 462 : 2003 (2) KLT 613 : 2003(2) KLJ 513 : ILR 2003(2) Ker.586** placed by the learned counsel for the complainant, wherein, in paragraph No.25, the Division Bench of this Court held as under:

“25. In view of the above, the question as posed at the outset is answered in the negative. It is held that:

(1) When a person issues a cheque, he acknowledges his liability to pay. In the event of the



cheque being dishonoured on account of insufficiency of funds he will not be entitled to claim that the debt had become barred by limitation and that the liability was not thus legally enforceable. He would be liable for penalty in case the charge is proved against him.

(2) The view taken by this Court in **Joseph's** case cannot be sustained as laying down the correct principle of law. It is consequently overruled."

According to the learned counsel for the complainant, similar view has been taken by the learned Single Judges of this Court in the decisions in **Mamman S.A. v. C.P.Gopalan Achari and Another**, reported **2011(3) KHC 806** and **Kesavan E.K. v. Thomas**, reported in **2025(1) KHC 627**. In fact, when the decision of the learned Single Judge in **Joseph v. Devassia**, reported in **2000(3) KLT 533** was challenged before the Hon'ble Apex Court as per the decision in **Sasseryil Joseph V. Devassia**, reported in **MANU/SCOR/00031/2001** the Apex Court confirmed the above verdict of the learned Single Judge. At the same time, it is noticeable that in paragraph Nos.21 and 22 of the Division Bench decision in **Ramakrishnan's** case, the Division Bench considered



the above aspect while laying down the ratio therein. On looking at another decision of the Apex Court placed by the learned counsel for the appellant in **Hymavathi K. v. State of Andhra Pradesh**, reported in **2023(6) KHC 117**, wherein quashment of a complaint, filed alleging commission of offence punishable under Section 138 of the NI Act, by the High Court holding that the debt involved therein as time-barred debt which was not legally enforceable, was challenged before the Apex Court, the Apex Court held in paragraph No.10 that *from a perusal of the legal position enunciated, it is crystal clear that this Court keeping in perspective the nature of the proceedings arising under the NI Act and also keeping in view that the cheque itself is a promise to pay even if the debt is barred by time has in that circumstance kept in view the provision contained in S.25(3) of the Contract Act and has indicated that if the question as to whether the debt or liability being barred by limitation was an issue to be considered in such proceedings, the same is to be decided based on the evidence to be adduced by the parties since the question of limitation is a mixed question of law and fact. It is only in cases wherein an amount which is out and out non-*



*recoverable, towards which a cheque is issued, dishonoured and for recovery of which a criminal action is initiated, the question of threshold jurisdiction will arise. In such cases, the Court exercising jurisdiction under S.482 Cr.PC will be justified in interfering but not otherwise. In that light, this Court was of the view that entertaining a petition under S.482 CrPC to quash the proceedings at the stage earlier to the evidence would not be justified. Similar view has been taken by the Apex Court in another decision in **A.V.Murthy v. B.S. Nagabasavanna**, reported in **2002 KHC 1154**.*

8. The learned State Brief, in fact, justified the verdict of acquittal on the submission that the verdict impugned would not require any interference. According to him, a time-barred debt is not legally enforceable on the first principle and as such, the finding of the learned Magistrate in this regard is liable to be confirmed. It is pointed out that the legal position pointed out by the learned counsel for the appellant would require reconsideration to lay down a ratio on the first principle.



9. Having appraised the rival contentions, the points arise for consideration are:

1. Whether the learned Magistrate erred in acquitting the accused merely on the ground that Ext.P1 cheque was issued for a time-barred debt?
2. Whether the verdict impugned would require any interference?
4. Order to be passed.

10. Here, PW1 given evidence, supporting the transaction and execution of Ext.P1 cheque. The case of the complainant is that the accused had borrowed an amount of ₹9,30,230/- from the complainant. The money was given to the accused through various bank transfers. According to the complainant, Ext.P1 cheque was issued by the accused in his favour for discharging the said liability. He deposed about the presentation of the cheque, its dishonour, and failure on the part of the accused to repay the cheque amount, even on issuance of demand notice. Exts.P1 to P11 documents were tendered in



evidence through the complainant to prove his case. The power of attorney holder of the complainant was examined as PW2. He stated that he had personal knowledge regarding the transaction by which the accused had executed and handed over Ext.P1 cheque to the complainant.

11. The case of the complainant is that the accused had executed Ext.P1 cheque in his favour towards discharge of a legally enforceable debt on 02.07.2015 and handed over the same to the complainant at the house of the complainant, acting on his demand for the said sum on 30.06.2015. PW1 has specifically stated that the accused herein had signed Ext.P1 cheque dated 06.07.2015 in his presence and in the presence of PW2 as well.

12. On perusal of the judgment and the evidence available, it is perceivable that, in the instant case, transaction led to execution of Ext.P1 cheque was established by the complainant by giving evidence as PW1, supported by the evidence of PW2, and



Exts.P1 to P12. It was found so by the learned Magistrate also. DW1, the accused himself, got examined and Ext.D5, his statement of accounts, was tendered in evidence and the same would show that the transaction took place during the period 2011 and 2012. This aspect is not disputed by the complainant also. Accordingly, the learned Magistrate found that Ext.P1 cheque was issued towards a time-barred debt and the same is not a legally enforceable debt for the purpose of finding offence under Section 138 of the NI Act.

13. Adverting to the legal position, settled and reiterated by this Court, it is held that when a cheque is issued for a time-barred debt, the same is akin to revival of the debt and liability thereof by acknowledging the debt and liability and thereby the nature of the debt seizes to be a time-barred debt. It is pertinent to note that issuance of cheque to discharge a time-barred debt or for repayment of a time-barred debt in any manner is not legally prohibited. When a cheque is issued towards a time-



barred debt by reviving the period of limitation, merely for the reason that the cheque was issued towards a time-barred debt does not make a prosecution under Section 138 of the NI Act impermissible. In such view of the matter, the learned Magistrate went wrong in acquitting the accused on finding that the cheque was issued towards a time-barred debt. Thus, the verdict impugned would require interference and the appeal succeeds accordingly.

14. In the result, this appeal stands allowed and the judgment of acquittal rendered by the learned Magistrate stands set aside. Consequently, the first respondent/accused is convicted for the offence punishable under Section 138 of the NI Act.

15. The accused is sentenced to undergo simple imprisonment for a day till rising of the Court and to pay a fine of ₹14,00,000/- (Rupees fourteen lakh only) to the complainant. In default of payment of fine, the accused shall undergo default



imprisonment for a period of six months. If the fine amount would be paid or realised, ₹13,50,000/- (Rupees thirteen lakh and fifty thousand only) shall be given as compensation to the complainant under Section 357(1)(b) of the Code of Criminal Procedure, and the remaining amount of ₹50,000 (Rupees fifty thousand only) shall go to the State Exchequer being cost.

16. The first respondent/accused is directed to appear before the Judicial First Class Magistrate Court, Varkala, to undergo the sentence imposed at 11.00 am on 31.10.2026 and on failure to do so, the learned Magistrate is directed to execute the sentence hereby imposed without fail.

Registry is directed to forward a copy of this judgment to the Judicial First Class Magistrate Court, Varkala, for information and compliance forthwith.

Sd/-
A. BADHARUDEEN
JUDGE