CNR : KLHC010153012011

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2026 / 20TH KARTHIKA, 1948

CRL.A NO. 1414 OF 2011

AGAINST THE JUDGMENT DATED 11.06.2010 IN ST NO.153 OF 2007 OF JUDICIAL MAGISTRATE OF FIRST CLASS,VADAKARA

APPELLANT/COMPLAINANT:

A.M. GOPALAN,MANAGING DIRECTOR
SREE GOKULAM CHIT AND FIANCE CO. (P) LTD., VADAKARA
REPRESENTED BY POWER OF ATTORNEY HOLDER JAYAKUMAR,
S/O.KUTTIKRISHNAKURUP, PEECHAMPARAMBATH HOUSE, CHORODE
AMSOM DESOM, VADAKARA TALUK

BY ADV.SRI.MAHESH V RAMAKRISHNAN

RESPONDENTS/STATE AND ACCUSED:

1. **STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM, PIN – 682 031**
2. **ABOOBACKER, S/O.MOOSA**
   SHAFEER MANZIL, CHERUPARAMBATH HOUSE, ERAMALA P.O., VATAKARA TALUK, PIN – 673 501

R1 BY SR.PUBLIC PROSECUTOR SRI.SAJEEV P K
R2 BY ADVS.
SMT.M.MANJU
SRI.K.PRADEEPAN (VENGALAM)
SRI.K.P.PRADEEPAN
SRI.K.R.RANJITH
SRI.R.SUDHISH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03.11.2026, THE COURT ON 11.11.2026 DELIVERED THE FOLLOWING:

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CR

JUDGMENT

Dated this the 11th day of November, 2026

This appeal has been filed under Section 378(4) of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.' hereinafter), challenging the judgment in S.T.No.153/2007, dated 11.06.2010 on the files of the Judicial First Class Magistrate Court, Vatakara, at the instance of the complainant in the said case, arraying the accused as the 2nd respondent herein and the State of Kerala as the 1st respondent.

2. Heard the learned counsel for the appellant/complainant as well as the learned Public Prosecutor, in detail. Perused the judgment and the trial court records.

3. The parties in this appeal will be referred to as 'the complainant' and 'the accused' hereinafter.

4. On tracing the genesis of this case, a complaint had been filed by the complainant before the Judicial First Class Magistrate

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Court, Vatakara on the allegation that the accused had committed offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act' hereinafter). The summary of the allegation is that the accused subscribed a chitty having sala of Rs.3 Lakh on 28.05.2004 and availed the chitty prize amount on 01.09.2006 by auction. But he was not prompt in repaying the chitty instalments and accordingly, as on 01.08.2006, the amount accumulated to a sum of Rs.1,83,611/- (Rupees One Lakh Eighty-Three Thousand Six Hundred and Eleven only) (principal amount is Rs.1,48,075/- and interest is Rs.35,536/-). The further case of the complainant is that in discharge of the said sum, the accused issued cheque dated 01.08.2006 drawn on ICICI Bank, Vatakara branch on assurance of repayment. But the cheque got dishonoured for want of funds, and the accused failed to repay the amount even after receipt of notice.

5. The learned Magistrate took cognizance for the offence

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punishable under Section 138 of the NI Act and opted summary trial proceedings. During trial, PW1, the power of attorney holder of the Managing Director of Sree Gokulam Chits and Finance Company was examined and Exts.P1 to P7 were marked on the side of the complainant. No defence evidence was adduced.

6. On appreciation of the evidence, the learned Magistrate acquitted the accused, holding that the accused had succeeded in probabilising his defence that he had not issued Ext.P1 cheque towards any legally enforceable debt. The specific contention raised by the accused before the trial court was that he had issued a blank cheque to the complainant, when he had joined the chitty, by way of security, and that he had not issued the cheque in discharge of any debt or liability.

7. The learned counsel for the complainant argued that the said finding is erroneous. According to him, the evidence of PW1 ought to have been accepted by the trial court to prove the transaction and the execution of the cheque for the amount due from the accused

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towards the chitty transaction.

8. Whereas, the learned counsel for the accused submitted that, in the instant case, no documents were produced to show the existence of the chitty or the statements of account thereof to establish the balance amount due as on the date of issuance of the cheque and to substantiate the liability alleged by the complainant. Therefore, the verdict is liable to be confirmed.

9. In view of the rival contentions, the points arise for consideration are:

(i) Whether the learned Magistrate went wrong in holding that the accused did not commit the offence punishable under Section 138 of the NI Act?

(ii) Whether the verdict would require interference?

(iii) The order to be passed?

10. Point Nos.(i) to (iii)

Here, Ext.P7 is the copy of the power of attorney executed

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by A.M. Gopalan, Managing Director of Sree Gokulam Chits & Finance Co. (P) Ltd. (the complainant), in favour of PW1 authorising him to conduct the case. At the time of evidence, PW1 filed chief affidavit. He deposed that he was the power of attorney holder of the complainant as per Ext.P7. According to him, the accused joined for a chitty run by the complainant having sala of Rs.3 Lakh as per chitty No.J2D 129/3. On 01.09.2006, he had auctioned the chitty and thereafter, he failed to repay the installments of the chitty and accordingly, he had issued Ext.P1 cheque to the tune of Rs.1,83,611/- (Rupees One Lakh Eighty-Three Thousand Six Hundred and Eleven only) (Rs.1,48,075/- towards principal amount and Rs.35,536/- towards interest) and the said amount was outstanding. He deposed about presentation of the above cheque for collection, its consequential dishonour, issuance of legal notice, its acceptance by the accused and failure on the part of the accused to repay the amount. Apart from Ext.P1 cheque, Ext.P2, the dishonour memo issued by the ICICI Bank and Ext.P3 dishonour

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memo issued by Federal Bank were tendered in evidence through PW1. Ext.P4, the copy of lawyer notice, Ext.P5, the postal receipt and Ext.P6, the acknowledgment card signed by the accused were also let in evidence through PW1. During cross-examination, his version is that the chitty prize given to the accused was Rs.2,25,000/- (Rupees Two Lakh Twenty-Five Thousand only). But, he did not say the exact amount which had been remitted by the accused towards the chitty transaction without looking into the accounts. According to him, since the sala of the chitty was Rs.3 Lakh, the accused should have repaid the amount in 20 instalments at the rate of Rs.15,000/- (Rupees Fifteen Thousand only) each. He also agreed to produce the documents pertaining to the same. He also deposed that he could not say when and on which date the accused defaulted the amount. He also did not say when the accused issued Ext.P1 cheque. He added that the accused verified the accounts and issued Ext.P1 cheque and he was present at the time of issuance of the cheque. He deposed further

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that another person also accompanied the accused and he had written the entries in Ext.P1. Even though the signature in Ext.P1 as that of the accused was denied by the learned counsel for the accused, PW1 given evidence that it was the accused who had written the name and signature in the cheque.

11. Going by the reasons whereby the learned Magistrate acquitted the accused, it could be seen that during 313 questioning of the accused, he had put up a defence that he had joined the chitty and issued Ext.P1 as a security, but he did not issue Ext.P1 in discharge of any legally enforceable debt. While addressing the contentions raised by both sides, it was observed by the learned Magistrate in paragraph No.6 as under:

> *"6. .....In the complaint itself, it is stated that accused had availed the chit amount by an auction on 1-9-2006. It is the case of the complainant that after availing the chit amount, accused defaulted its repayment. On demand of the complainant, accused issued Ext.P1 cheque towards that liability. But it is pertinent to note that the*

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date of Ext.P1 cheque is 1-8-2006, a date prior to the date of original debt date. In more specific, accused had availed the chit amount on 1-9-2006. But towards that debt, accused issued Ext.P1 cheque on 1-8-2006, prior to the chit date. It is specific that complainant has not a case that accused issued Ext.P1 cheque in discharge of any future liability. If it is so, there is a reasonable doubt arising in the mind that whether Ext.P1 cheque dated 1-8-2006 had issued towards a debt arosed on 1-9-2006. In the complaint itself, and in the affidavit filed by PW1, the cheque date and the debt date are 1-8-2006 and 1-9-2006 respectively. The evidence of PW1 is conjunctively existing with the averment in the complaint. PW1 has also not at all a case that accused had issued Ext.P1 cheque towards any future debt. In the cross examination, PW1 admitted that there is a chit agreement with respect to the original transaction. But he admitted that the said agreement was not produced before this court. Further PW1 would not depose in the cross examination that how many instalments were paid by the accused towards the liability. In the cross examination, it is revealed that accused had to repay the chit amount by 20 equal monthly instalments of Rs.15,000/-each. But PW1 in his cross examination admitted that unless the account is

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verified, he could not say how much amount was repaid by the accused. Further PW1 admitted in cross examination that in the year 2006, accused came to the office of the complainant. After proper verification, accused issued Ext.P1 cheque. Therefore, from the oral testimony of PW1, it is understood that accused had issued Ext.P1 cheque after the chit amount became due. If it is so, the date of Ext.P1 cheque would not be a date prior to the date of original transaction."

12. While addressing the reasons by which the learned Magistrate acquitted the accused, it is discernible that according to PW1, the accused joined for a chitty, having sala for Rs3 Lakh. But PW1 deposed that he could not say the details of the chitty transaction without looking into the records and there was an agreement in this regard. Going through the records produced by the complainant, the documents pertaining to the chitty transactions were not produced. However, the chitty transaction was admitted by the accused. But, his case is that he did not issue Ext.P1 towards discharge of any legally enforceable debt. PW1 could not say how much amount was repaid by

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the accused and the instalments actually remitted by the accused.

13. Thus, this is a case wherein the complainant (Mukhtiar) examined during 2009 could not speak the details of the chitty. Even assuming the fact that since the accused admitted the chitty transaction and discharge of the entire liability, the prime question to be considered is whether the complainant successfully discharged its initial obligation showing the existence of a legally enforceable debt, which led to issuance of Ext.P1. Even though the case of the complainant is that for Rs.1,83,611/- (Rupees One Lakh Eighty-Three Thousand Six Hundred and Eleven only), cheque was issued on 01.08.2006, in the chief affidavit itself, it is stated that the accused auctioned his chitty only on 01.09.2006. If so, the very case of the complainant that for a chitty auctioned on 01.09.2006, the accused issued Ext.P1 cheque dated 01.08.2006, that too, after arriving the liability at Rs.1,83,611/- (Rupees One Lakh Eighty-Three Thousand Six Hundred and Eleven only) is an absolute improbability, and is not

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digestible to prudence. In this context, non-production of the statements of accounts showing entitlement of the said amount from the accused, despite non-production of the other documents relating to the chitty transaction, would become fatal to the complainant. It is the well settled law that mere tendering of the dishonoured cheque in evidence by the complainant or his agent would not be sufficient to hold that the complainant discharged his initial burden. The initial burden cast upon the complainant includes proof of the transaction which ushered the issuance of the cheque. It could not be said that mere tendering of the cheque by itself is sufficient to find discharge of the initial burden on the part of the complainant, unless the transaction is fully established in a convincing manner, liable to be accepted by a court of law. If so, the learned Magistrate is right in holding that the complainant's case not proved beyond reasonable doubts, where the defence case put up by the accused is having force. Holding so, the verdict impugned is liable to be confirmed.

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In the result, this appeal fails and is dismissed accordingly.

Sd/-
A. BADHARUDEEN
JUDGE

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