

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 2ND DAY OF JUNE 2025 / 12TH JYAISHTA, 1947

CRL.A NO. 553 OF 2014

AGAINST THE JUDGMENT DATED 06.02.2014 IN S.T. NO.10 OF 2012 OF THE
JUDICIAL FIRST CLASS MAGISTRATE COURT - II, KARUNAGAPPALLY

APPELLANT/COMPLAINANT:

ABDUL RAHIM
SWAGATH FUELS, PROPRIETOR INDIAN OIL DEALER, PADANORTH
KARUNAGAPPALLY, RESIDING AT AVOORAYYATH HOUSE,
PADA NORTH.P.O, KARUNAGAPPALLY, PIN-690518.

BY ADVS.
SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH

RESPONDENTS/ACCUSED AND STATE:

- 1 SUKU S
ONAMPALLIL HOUSE,ADINADU SOUTH, KATTILKKADAVU.P.O,
KARUNAGAPPALLY, PIN-690518.
- 2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, PIN-682031.

SR PP - RENJITH GEORGE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02.06.2025, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“C.R”

JUDGMENT

Dated this the 2nd day of June, 2025

The complainant in S.T. No.10 of 2012 on the files of the Judicial First Class Magistrate Court - II, Karunagappally, has filed this appeal, with the leave of this Court, challenging the judgment of acquittal dated 06.02.2014, where the prosecution alleged commission of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 [hereinafter referred as 'NI Act' for short], by the accused, who is the 1st respondent herein. The state of Kerala represented by the learned Public Prosecutor is arrayed as the 2nd respondent herein.

2. Heard the learned counsel for the appellant and the learned Public Prosecutor. Though notice was served upon the 1st respondent/accused, he did not appear.

3. Parties in this appeal shall be referred as 'complainant' and 'accused' hereafter, for easy reference.

4. In this matter, the complainant launched prosecution against the accused alleging commission of

offence punishable under Section 138 of the NI Act, when cheque for Rs.1,46,000/- drawn on Syndicate Bank, Karunagappally Branch, issued by the accused in favour of the complainant, for a legally enforceable debt, was dishonored for want of funds.

5. After, framing charge for the offence under Section 138 of the NI Act, the trial court recorded evidence and tried the matter. PWs 1 and 2 were examined and Exts.P1 to P8 were marked on the side of the complainant. Exts.C1, C1(a) and C2 were also marked as court exhibits. Even though, the accused was given opportunity to adduce defence evidence after questioning him under Section 313(1)(b) of Cr.P.C, he did not opt to adduce any defence evidence.

6. Finally, the trial court acquitted the accused for the offence punishable under Section 138 of the NI Act, mainly on finding that either in Ext.P2 intimation memo or in Ext.P3 dishonor memo, the number of the cheque dishonored was not disclosed.

7. While assailing the verdict of the trial court, it is

pointed out by the learned counsel for the appellant that, initially the name of the Bank Manager was cited as a witness for the complainant, but he was not examined. Even though, a petition was filed by the complainant to examine the Bank Manager to prove his case, subsequently the same was dismissed by the trial court on 05.11.2011. Thus, the trial court denied a fair opportunity to the complainant to adduce evidence. Therefore, the verdict of the trial court is liable to be set aside and the matter shall be remanded to the trial court for providing an opportunity to the complainant to examine the Bank Manager.

8. Now, the questions arise for consideration are:

- 1. Whether the verdict of the trial court would require interference?*
- 2. Orders to be passed?*

9. As per Section 146 of the NI Act, it has been provided that, the Court shall, in respect of every proceeding under this Chapter, on production of Bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of

dishonour of such cheque, unless and until such fact is disproved.

10. Thus, Section 146 of the NI Act makes bank's slip as a *prima facie* evidence to presume the dishonor of the cheque. But, in order to apply Section 146 of the NI Act, the bank's slip should have to mention the number and date of the cheque and also the cheque amount with respect to the cheque dishonored, to enter into a finding that the cheque alleged to be dishonored was dishonored on a reading of the banker's slip.

11. In this matter, Exts.P2 and P3 do not contain the number of the cheque. Therefore, the trial court ought to have granted an opportunity to the complainant to examine the Bank Manager with the relevant document to prove this aspect. Thus, I find merit in the argument raised by the learned counsel for the complainant, that the trial court denied a fair opportunity to the complainant to adduce evidence.

12. Holding so, in order to provide an opportunity to the complainant to adduce evidence, I am inclined to set

aside the verdict impugned, for effective disposal of the matter afresh, after providing an opportunity to the complainant to examine the Bank Manager.

13. In the result, this appeal stands allowed and the judgment under challenge stands set aside and the matter is remitted back to the trial court for disposal afresh, after providing an opportunity to the complainant to examine the Bank Manager, as per law. The complainant is directed to appear before the trial court at 11.00 a.m. on 01.07.2025.

Registry is directed to forward a copy of this judgment to the trial court within ten days for information and compliance.

Sd/-

**A. BADHARUDEEN
JUDGE**

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