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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 2ND DAY OF JULY 2025 / 11TH ASHADHA, 1947

CRL.REV.PET NO. 1015 OF 2024

AGAINST THE JUDGMENT DATED 31.07.2024 IN Cr1.A NO.214 OF
2022 OF ADDITIONAL DISTRICT COURT-I, MAVELIKKARA ARISING
OUT OF THE JUDGMENT DATED 24.11.2022 IN CC NO.325 OF 2019
OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KAYAMKULAM
REVISION PETITIONER/APPELLANT/ACCUSED:

SAJU

AGED 43 YEARS

S/O SADASIVAN, SAJU BHAVANAM, KANNANAKUZHI
MURI, THAMARAKKULAM VILLAGE, MAVELIKKARA,
ALAPPUZHA DISTRICT, PIN - 690505

BY ADVS.

SMT.MANJUSHA K

SRI.M.T.SURESHKUMAR

SMT.SREELAKSHMI SABU

RESPONDENT/RESPONDENTS/COMPLAINANT & STATE:

- 1 SHALIMAR HARDWARES, KATTANAM,
REPRESENTED BY PROPRIETOR MUHAMMEDKUNJU
AGED 69 YEARS
S/O HAJI IBRAHIMKUNJU, SALIMAR HOUSE,
ELIPPAKKULAM MURI, VALLIKUNNAM VILLAGE,
ALAPPUZHA DISTRICT, PIN - 690501
- 2 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031



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OTHER PRESENT:

SR PP SRI HRITHWIK C S

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 02.07.2025, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:



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C.R.

P.V.KUNHIKRISHNAN, J

Crl.Rev.Pet. No.1015 of 2024

Dated this the 2nd day of July, 2025

ORDER

The short point raised by the revision petitioner in this case is that, if statutory notice under Section 138(b) of the Negotiable Instruments Act, 1881 (hereinafter referred to as, the Act) is issued to a person, and the relative of that person accepts the same, whether the same can be treated as service of notice.

2. The revision petitioner is an accused in C.C.No.325 of 2019 on the file of the Judicial First Class Magistrate Court-II, Kayamkulam. It was a prosecution initiated against the petitioner under Section 138 of the



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Act. The first respondent is the complainant. (Hereinafter, the petitioner and the first respondent are mentioned as the accused and the complainant, respectively.)

3. The case of the complainant is as follows: The complainant is a proprietary concern in the name and style 'M/s Shalimar Hardwares' at Kattanam. The complainant concern is engaged in the business of construction materials. Sri. Mohammedkunju, Salimar House, Elippakkulam Muri, Vallikunnam Village represent the complainant concern. The accused purchased some building materials from the complainant concern on 02.03.2019. The balance amount to be paid by the accused to the complainant concern in the above purchase was Rs. 92,500/-. The accused, in the discharge of the above legally enforceable liability, executed and issued a cheque bearing No. 971851 drawn on the State Bank of India Pallickal Branch, noting the date as 02.04.2019 and



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stating the amount as Rs. 92,500/- in favour of the complainant. As per the assurance given by the accused, the complainant presented the cheque before the State Bank of India, Pallickal Branch. Whereas, the cheque was returned unpaid on the reason 'funds insufficient' with a memo dated 03.04.2019. Thereafter, the complainant issued a legal notice on 27.04.2019 against the accused. The accused received the legal notice on 30.04.2019. But, he did not repay the amount covered in the cheque. Thus, the accused is alleged to have committed the offence punishable under Section 138 of the Act.

4. To substantiate the case, two witnesses were examined on the side of the complainant, and Exts.P1 to P5 documents were marked. Ext.X1 to X4 were also marked. After going through the evidence and documents, the trial court found that the accused committed the offence under Section 138 of the Act and



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he was convicted and sentenced to undergo simple imprisonment for three months and to pay an amount of Rs.92,500/- as compensation to the complainant under Section 357(3) of the Code of Criminal Procedure with a default clause of simple imprisonment for one month for nonpayment. Aggrieved by the conviction and sentence, the accused filed an appeal. The appeal was considered by the Additional Sessions Judge-I, Mavelikkara. The Sessions Judge confirmed the conviction but reduced the sentence to imprisonment for one month. The compensation awarded was also confirmed. Hence, this revision.

5. Heard Advocate Manjusha who appeared for the accused and the learned Public Prosecutor. Even though the notice is issued, there is no appearance for the complainant.



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6. Advocate Manjusha, who appeared for the accused, submitted that a reading of the evidence of PW1 will show that the notice was not received by the accused. PW1 admitted in his evidence that the notice was served to a relative of the accused. There is no case to the complainant that the accused was aware of the receipt of notice by his relative, is the submission of Advocate Manjusha. In such circumstances, the prosecution is unsustainable because there is no statutory notice served on the accused is the sum and substance of the argument of Advocate Manjusha.

7. This Court considered the contentions of the petitioner. Section 138 of the Act reads as follows:

"138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the



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credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for 'a term which may be extended to two years', or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, **to the drawer of the cheque**, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability.” (underline and emphasis are supplied)



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8. As per Section 138(b) of the Act, the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, **to the drawer of the cheque**, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. Therefore, a notice under Section 138(b) of the Act is mandatory, and it should be served to the drawer of the cheque. PW1 was cross-examined by the accused in this aspect in detail. The relevant portion of the deposition of PW1 reads thus:

“പ്രതി notice കൈപ്പറ്റിയെന്നത് ആര് പറഞ്ഞിരിക്കുന്നത് (Q) Notice അയച്ചു. പ്രതി accept ചെയ്തു. Ext.P1 ലെ ഒപ്പ് പ്രതിയുടേതാണ് . Ext.P4 shown to witness. അതിലെ ഒപ്പ് പ്രതിയുടെ ബന്ധുക്കളുടേതാണ് Ext.P1 ലെ ഒപ്പല്ല Ext.P4 ലേത്. Ext.P4 ആര് കൈപ്പറ്റിയെന്നാണ് പറയുന്നത് (Q) അദ്ദേഹത്തിന്റെ വീട്ടുകാരി ഒപ്പിട്ട് വാങ്ങി എന്നാണ് ഞാൻ ധരിച്ചിരിക്കുന്നത് (A). പ്രതി notice കൈപ്പറ്റിയിട്ടില്ലെന്ന് എത്രനാളായി അറിഞ്ഞിട്ട് (Q) ഒരു മാസമേ ആയിട്ടുള്ളൂ അറിഞ്ഞിട്ട് (A) പ്രതി notice കൈപ്പറ്റിയെന്ന് affidavit ൽ പറഞ്ഞിരിക്കുന്നത് നേരാനോ കളവാനോ (Q) പ്രതിയുടെ ബന്ധുവാൻ കൈപ്പറ്റിയത് (A)”



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9. From the above-extracted passage in the evidence of PW1, it is clear that the notice was served on the relative of the accused. PW1 has no case that the accused has knowledge of the receipt of the notice by his relative. If that is the case, it can be presumed at least that there is constructive notice. There is no such case for the complainant. If that is the case, it cannot be said that there is any service of notice to the petitioner. Moreover, there is no substantial compliance with Section 138(b) of the Act either.

10. The Apex Court in ***Thomas M.D. v. P.S. Jaleel and Another*** [2009 KHC 4398] has considered a similar situation. Paragraphs 4 and 5 of the said judgment read thus:

"4 Learned counsel for the appellant argued that his client's conviction is liable to be set aside because before filing complaint, the respondent did not serve upon him notice as per the requirement of cl.(b) of proviso to S.138 of the Act. He submitted that service of notice on the appellant's wife cannot be treated as



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compliance of the mandate of law. Learned counsel for respondent No.1 did not dispute that the notice issued by his client was, in fact, served upon the appellant's wife but argued that this should be treated as sufficient compliance of the requirement of giving notice of demand.

5 S.138 deals with the dishonour of cheque for insufficiency, etc., of funds in the accounts of the person who draws the cheque and lays down that such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both. Proviso to S.138 specifies the conditions which are required to be satisfied before a person can be convicted for an offence enumerated in the substantive part of the section. Cl. (b) of the proviso to S.138 cast on the payee or the holder in due course of the cheque, as the case may be, a duty to make a demand for payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. In the present case, the notice of demand was served upon the wife of the appellant and not the appellant. Therefore, there is no escape from the conclusion that complainant - respondent had not complied with the requirement of giving notice in terms of cl.(b) of proviso to S.138 of the Act. Unfortunately, the High Court overlooked this important lacuna in the complainant's case. Therefore, the conviction of the appellant cannot be sustained."



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11. Therefore, the service of notice on the relative of the accused is not sufficient, especially when there is no evidence from the side of the complainant that the accused was aware of the service of notice on his relative. If there is no such evidence, it is to be presumed that the statutory notice under Section 138(b) of the Negotiable Instruments Act, 1881 is not served on the accused. The upshot of the above discussion is that the conviction and sentence imposed on the petitioner are to be set aside.

Therefore, the revision petition is allowed. The conviction and sentence imposed on the revision petitioner as per judgment dated 24.11.2022 in C.C. No.325 of 2019 of Judicial First Class Magistrate Court-II, Kayamkulam, which is modified as per the judgment dated 31.07.2024 in Crl.A. No.214 of 2022 of Additional District Court-I, Mavelikkara are set aside and the revision



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petitioner is acquitted. The bail bond, if any, executed by the petitioner will stand cancelled. The amount, if any, deposited by the revision petitioner as per the orders of this court or the appellate court shall be disbursed to him forthwith.

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

ds 02.07.2025