



2026:KER:27586

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 26TH DAY OF MARCH 2026/5TH CHAITHRA, 1948

CRL.A NO. 1965 OF 2025

AGAINST THE JUDGMENT DATED 05.02.2024 IN Cr1.L.P.
NO.32 OF 2024 OF HIGH COURT OF KERALA ARISING OUT OF THE
ORDER/JUDGMENT DATED 16.12.2023 IN ST NO.404 OF 2018 OF
JUDICIAL MAGISTRATE OF FIRST CLASS, NEDUMKANDOM

APPELLANT/COMPLAINANT:

MR. DANIKUTTI PHILIP
AGED 56 YEARS
S/O. PHILIPOSE, NEDUMPARAMBIL HOUSE,
NEDUMKANDAM.P.O., PARATHODE VILLAGE,
IDUKKI, PIN - 685553

BY ADV SHRI.LALJI P.THOMAS

RESPONDENTS/RESPONDENTS:

- 1 MR. JOHNYKUTTY.J
OZHUKKAYIL, S/O. JOSEPH, RETD. PROFESSOR,
MES COLLEGE, OZHUKKAYIL HOUSE,
NEDUMKANDAM, KALKOONTHAL VILLAGE,
NEDUMKANDAM, I IDUKKI, PIN - 685553
- 2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
KOCHI, PIN - 682031
BY ADVS.
SHRI.SARATH BABU KOTTAKKAL
SMT.ARCHANA VIJAYAN
SHRI.SEBASTIN
SRI.VIPIN NARAYAN .A, SR.PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION
ON 26.03.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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JUDGMENT

Dated this the 26th day of March, 2026

This criminal appeal has been filed under Section 419(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023, at the instance of the complainant in S.T.No.404/2018 on the files of the Judicial First Class Magistrate Court, Nedumkandam. The 1st respondent herein is the accused in the said case and the 2nd respondent herein is the State of Kerala, represented by the Senior learned Public Prosecutor.

2. Heard the learned counsel for the appellant, the learned counsel appearing for the 1st respondent/accused and the learned Senior Public Prosecutor.

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

4. The complainant lodged complaint under Section 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act' for short), alleging



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commission of offence punishable under Section 138 of the NI Act by the accused, on the premise that the accused issued a cheque bearing No.02075324 dated 31.10.2017 to the complainant, in discharge of a loan to the tune of ₹10,90,000/- (Rupees ten lakh ninety thousand only) availed by the accused on 27.05.2011, got dishonoured for want of funds.

5. The learned Magistrate recorded evidence of the complainant as PW1 and the evidence of one witness as PW2 on the side of the prosecution. Further, Exts.P1 to P6 were also marked on the side of the prosecution. No evidence was adduced on the side of the defence.

6. Thereafter, relying on the decision of the Apex Court in **Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel and Another**, reported in **2022 (7) KHC 61**, the learned Magistrate acquitted the accused on the finding that before presentation of Ext.P1 cheque for ₹10,90,000/- (Rupees ten lakh ninety thousand only) for



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collection on 16.01.2018, the complainant had received ₹1,94,000/- and ₹1,96,000/- from the accused on 14.11.2017 and 15.11.2017, respectively. Accordingly, the learned Magistrate found that the amount covered by Ext.P1 cheque is higher than the actual amount of debt due on the date of presentation of cheque and as a sequel thereof, it was found that Ext.P1 cheque did not represent a legally enforceable debt to fasten criminal liability upon the accused finding commission of offence under Section 138 of the NI Act. Thereby he accused/1st respondent was acquitted.

7. The learned counsel for the appellant argued that, even though the said omission happened on the part of the appellant, the amount covered by the cheque is due to the appellant. Therefore, the verdict impugned is to be interfered.

8. Opposing this contention, the learned counsel for the 1st respondent/accused submitted that the ratio laid down in **Dashrathbhai's** case (*supra*) is the correct



law. In view of the above, the offence under Section 138 of the NI Act could not be found, as rightly held by the learned Magistrate, and therefore, the appeal deserves to be dismissed.

9. Coming to the legal issue involved in this case, Sections 15 and 56 of the NI Act assumes significance. Section 15 of the NI Act deals with indorsement and Section 56 of the NI Act deals with indorsement for part of the sum due. Section 15 of the NI Act provides as under:

“15. Indorsement.—When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the “indorser.”

Section 56 of the NI Act provides as under:

“56. Indorsement for part of sum due.—No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the



instrument, which may then be negotiated for the balance”.

10. In **Dashrathbhai’s** case (*supra*), in paragraph No.30, while addressing the indorsement required to be made under Sections 15 and 56 of the NI Act, the Apex Court held as under:

“30. In view of the discussion above, we summarise our findings below:

- (i) For the commission of an offence under S.138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation;*
- (ii) If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque;*
- (iii) When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in S.56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under S.138 will stand attracted;*
- (iv) The first respondent has made part - payments after the debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty*



lakhs represented on the cheque was not the 'legally enforceable debt' on the date of maturity. Thus, the first respondent cannot be deemed to have committed an offence under S.138 of the Act when the cheque was dishonoured for insufficient funds; and

- (v) *The notice demanding the payment of the 'said amount of money has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the provisos to S.138 need to be fulfilled in addition to the ingredients in the substantive part of S.138. Since in this case, the first respondent has not committed an offence under S.138, the validity of the form of the notice need not be decided.'*

11. Thus the law emerges is that, when a part of the sum covered by the cheque is paid during the period between the date on which the cheque is drawn and its encashment upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque. Further, when a part, or the whole of the sum represented in a cheque is paid by the drawer, the same must be indorsed on the cheque as prescribed under Section 56 of the NI Act. Then the indorsed cheque could be



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used to negotiate the balance, if any. On dishonour of cheque, which was presented for getting the balance amount, excluding the amount indorsed as paid, then the offence under Section 138 of the NI Act would be attracted. However, when part payment(s) is/are made and the indorsement mandated under Section 56 of the NI Act failed to be recorded, presenting the cheque for the whole sum, of which a part payment has already been paid, does not represent the legally enforceable debt; thus no offence under the NI Act would lie in case of dishonour of such a cheque. The rationale is that, in order to attract an offence under Section 138 of the NI Act, the dishonoured cheque must represent a legally enforceable debt.

12. On the facts of this case, admittedly, the cheque is dated 31.10.2017. As per the averments in the complaint, it could be gathered that the cheque was presented for collection through the Idukki District Co-operative Bank, Nedumkandam branch, on 02.11.2017 and



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the same got dishonoured for want of funds. After dishonour of the cheque for the first time, the accused paid ₹1,94,000/- and ₹1,96,000/- on 14.11.2017 and 15.11.2017 respectively to the complainant. It was thereafter when the accused failed to repay the balance amount, the cheque was again presented without making the required indorsement under Section 56 of the NI Act, and the complainant launched prosecution claiming ₹10,90,000/- as such, shown in the cheque itself, without disclosing the part payments in the complaint. If so, the prosecution could not be held as one consequent to dishonour of a cheque which represent a legally enforceable debt coming to ₹10,90,000/-. When the prosecution is not for a legally enforceable debt in full on the date of presentation of the cheque, no offence under Section 138 of the NI Act get attracted.

13. Since the law is settled in the above line, in the present facts of the case, finding of the learned Magistrate that offence under Section 138 of the NI Act is not



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attracted is perfectly justifiable. In view of the above, verdict impugned is liable to be confirmed.

In the result, appeal fails and is dismissed. The verdict impugned is confirmed.

**Sd/-
A. BADHARUDEEN
JUDGE**

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